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REPORTS OF COMMITTEES
OF THE
SENATE OF THE UNITED STATES

FOR THE
SECOND SESSION OF THE FORTY-THIRD CONGRESS,

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 7, 1874.—Ordered to be printed.

Mr. MORRILL, of Maine, submitted the following

R E P O R T :

[To accompany bill S. 963.]

The joint select committee appointed by virtue of the fifth section of an act approved June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," to wit :

That a joint select committee shall be appointed, consisting of two Senators, to be appointed by the Presiding Officer of the Senate, and two members of the House, to be appointed by the Speaker of the House of Representatives, whose duty it shall be to prepare a suitable frame of government for the District of Columbia, and appropriate draughts of statutes to be enacted by Congress for carrying the same into effect, and report the same to the two Houses, respectively, on the first day of the next session thereof; and they shall also prepare and submit to Congress a statement of the proper proportion of the expenses of said government, or any branch thereof, including interest on the funded debt, which shall be borne by said District and the United States, respectively, together with the reasons upon which their conclusions may be based; and in the discharge of the duty hereby imposed, said committee is authorized to employ such assistance as it may deem advisable, at an expense not to exceed the sum of five thousand dollars; and said sum, or so much thereof as may be necessary, be, and the same is hereby, appropriated for that purpose;

having attentively considered the subject-matter, report—

That, on entering upon a discharge of their duties, a glance at the history of the diverse experiments at government in the District which became the actual seat of the Government of the United States in the year 1800, the recent summary proceedings of Congress in relation thereto seemed to invite to efforts to avoid in the future a repetition of the past; while the unrestricted power conferred by the terms of the act gave ample scope for the adoption of such methods as might be supposed better suited to the peculiar jurisdictional rights and duties of Congress in relation to the political capital of the nation.

The committee do not enter into the question of whether the inhabitants of the District, being citizens of the United States, might not constitutionally have conferred upon them the power of legislation and the rights of municipal governments; but conceding, for the purposes of this discussion, such authority in Congress to exist, it is plain that all proper exercise of it must be held in strict subordination to the paramount rights and interests which the American people have in their capital, and the obvious duty of Congress to protect and promote them to the exclusion of all interfering or incompatible interests. Nor is it perceived that the exercise of the exclusive authority of Congress, by express grant of the Constitution under the terms of the cession, would in any just sense impinge the rights of local or self government. From the unqualified authority conferred upon Congress, and

that the object to be affected thereby is the capital of the nation, all legislation for the District must be held to be national in its character, and primarily in the interests of the American people at large, and that will be so whether that legislation be direct by Congress, or by delegated authority. If this proposition needs to be enforced, it is believed to be necessary only to refer to the objects and circumstances of the acquisition of the territory exclusively for the seat of government of the United States. That the national capital might be exempt from the contingency of conflicting local and general authority, the particular States were to concede all jurisdictional rights over the territory to be acquired, and Congress was to "exercise exclusive legislation in all cases whatsoever over said District." The seat of the supreme executive, legislative, and judicial departments of the Government, serene in its isolation alike from conflicts of factions and the necessities of commerce, was to symbolize the national unity of a people in their purpose "to form a more perfect union, establish justice, insure domestic tranquillity, provide for the general defense, promote the general welfare, and secure the blessings of liberty."

Congress, by the terms of the Constitution, becomes the trustee of the nation, administers its trust in its interests, and may not share its trusteeship with another to the prejudice of the *cestui que trust*—the body of the American people. Committed to its exclusive care, for a special and sacred purpose, to Congress will be imputed the results of its execution, however deputed.

The inexpediency of the delegation of its authority, if it were not alike inconsistent with the exclusive character of its jurisdiction and the objects of acquisition, is believed to be sufficiently elucidated in the history of the exercise of delegated jurisdiction in the District. That of the cities, it may be remarked, with no purpose to comment thereon, proved essentially inadequate and inefficient; that more ample authority which succeeded, on the contrary, unhappily enterprising, ambitious, and expensive.

It is believed that the purposes for which this District was acquired will be best accomplished and the interests of all connected with its growth, prosperity, and destiny best subserved by the direct exercise by Congress of the authority devolved upon it. While the primary and paramount obligation and duty is and will be to the national capital, it may not be overlooked or forgotten that that capital is the residence of many tens of thousands of American citizens, to be supplemented, in the progress and development of the country, by other tens and hundreds of thousands, and that, independent of any question of conflicting interests or authority, it is plain that as regards expenditures for the improvement and adornment of the capital of a great nation, having at the same time a proper respect to the convenience, privileges, and immunities of a resident population and of those connected with the administration of the Government, a unity of interest must be assumed, and, it is believed, may be accredited to exist, in that the general welfare would necessarily seem to be included in the proper development of the design of the capital city. The demands for expenditures, as indicated in the disposition of its avenues and streets and numerous squares, will necessarily be upon a scale beyond what might reasonably be imposed upon or drawn from the resources of a business and resident population. These may properly be required to make that just contribution to the current annual expenses, the interest of the public debt and its ultimate payment, which a people so situated as compared with other communities may be required to pay for like protection, privileges, and immu-

nities. The streets, avenues, squares, and general plan of the capital city bear the impress of paramount and exclusive nationality: spacious and grand in design, dedicated to the sacred uses of a national capital, onerous and even intolerable as a charge upon private property, the provision for supervision of all suitable improvements and decorations obviously, properly, and imperatively devolves upon Congress, and it will, as it respects the character of its jurisdiction and the dignity of its trust, exercise a jealous care over it. The acquisition of this District, conceived in a supposed public necessity, suggested by a humiliating experience of the Congress of the Confederacy, its wisdom affirmed by kindred events in our recent history, should, it is submitted, be maintained intact by the body in which the Constitution vested the exclusive power. The proportion of expenditures which should be borne by the United States and the citizens and resident property-holders, is a proposition not deemed susceptible of exact determination; nor does it, in the views taken by your committee, become important.

These, not to repeat, necessarily impose on Congress the duty of making provision for needful expenditures, as well as for their supervision, as for other branches of the public service.

And this is deemed not a departure from the principle which underlies the uniform policy of Congress as expressed in its legislation; in the design of the city, and the inhibition of all changes therein, in its ample provisions for water-supply, for the complete administration of justice, for a national police, for a board of health, the establishment of public schools, the support of charitable institutions, the maintenance of bridges, improvement of squares, the exercise of exclusive authority over streets and avenues, the admission and regulation of street and other railways; in fine, in every delegation of the exercise of authority, special or general, this paramount authority, obligation, and duty of Congress in relation to the District is apparent, as well when conferring limited municipal powers upon cities as in the institution of the first commission for its sole supervision and control, and never more signally displayed than in the recent summary abolition of the territorial government and the institution in its stead of an absolute board of control.

It has appeared to the committee that this District, whose geographical limits scarcely exceed the ordinary township, anomalous in its acquisition and jurisdictional rights, having one chief and paramount public interest, might not unfitly be treated as the Constitution plainly implies and enjoins, as a political unit needing only a harmonious system of laws and a faithful administration thereof, alike indifferent to policies of States or parties. The fact that it is the nation's capital justly inspires a national pride in its welfare, will, as the years come and go, commend it to the solicitous care of the representatives of the people of all parties; will make it, it is to be hoped, that common ground where the fervor of patriotism will rise above the zeal of partisanship, and the laws, appropriations, and appointments to office will be made in relation to its real wants, and cease to be shaped by partisan aspirations or local interests.

The committee recommend, as best calculated to avoid a repetition of the errors and short-comings of the past, and to promote the interests of all who are or may be in any way connected or associated with the national capital in the future, that Congress exercise that exclusive legislation over the District with which it is invested by the Constitution, and provide for the general superintendence of its affairs and the enforcement of the laws through officers and agents directly amenable to the supreme executive authority of the United States.

As to a frame of government, observing their instructions and also the constitutional limitations on the appointing power, and having regard to proper efficiency of administration and of official responsibility, the committee have deemed it necessary to make the new government for the District a department in the Government of the United States strictly limited to the affairs of said District. At the head of this department shall be a board of general control, designated a board of regents, of three persons, to be appointed by the President and confirmed by the Senate, with a certain tenure of office, and removable only for cause, who are to exercise the chief executive authority, always acting as a public body, and with limited and defined powers.

Within this department, and subject to its supervision, are distinct subdivisions or bureaus, at the head of each of which is a board of co-operative control, whose duties and powers are also defined, and whose doings are open to proper inspection.

These boards are appointed by the regents, except as to the board of education, a portion of the members of which are to be elected by the inhabitants, and except, also, as to the bureau of public works, the head of which is to be detailed by the President from the Engineer Corps of the Army, have a certain tenure of office, and are removable by the regents for cause. They relate to and embrace the entire civil service of the District, except such as falls under the Executive Departments and the courts, and are denominated the boards of health, of education, of police, of excise, of public works, fire board, of buildings.

So far as relates to these branches of the service generally, the best methods of securing efficiency and economy, and the principles involved, are much the same as those prevailing in other considerable American cities; and those agencies and methods have been adopted which experience has shown to be most reliable elsewhere, with such additional provisions as it is hoped will be found efficacious and especially adapted to the peculiar condition of the District.

With the view of relieving Congress of embarrassing details of strictly municipal affairs, it has been thought desirable to present a framework of government that could be administered with as infrequent appeals to its authority as the nature of the case would allow. To accomplish this it was necessary to confer sweeping, ill-defined, discretionary authority, or to enter into details as to the extent and manner of exercising authority, and accordingly the latter course has been adopted, and the committee trust will be found to have secured thereby a desirable publicity of official action, certainty as to method, responsibility for abuses, efficiency in the public service, and protection to individual rights. Authority to make suitable and necessary ordinances and regulations, in harmony with the laws of Congress, has been conferred upon those charged with the executive administration as extensive as the local interests are likely to require.

The militia system has been revised, and a limited and comparatively inexpensive force provided for, deemed adequate, however, to any demands for its service which may be anticipated.

The judicial courts, standing upon the basis of statutes of the United States, quite independent of local control, are not deemed necessarily to fall within the scope of the authority of the committee, and have received no share of its attention, except as to the police court, in regard to which certain provisions are made with the view of efficiency and dispatch in the transaction of its business.

The establishment of a municipal court is also provided for, having exclusive civil jurisdiction of matters now cognizable by justices of the

peace, and thus superseding the office and jurisdiction of said justices; and in addition thereto it is provided that any judge of said municipal court may, under such regulations as may be prescribed by the supreme court of the District, be designated by the chief justice of said court to hold a term and sessions of the police court with the view of facilitating the business therein.

Provision is made for the assessment and collection of a tax upon the real and personal estates of the inhabitants of the District, except such as are exempt by law, at the supposed medium rate of two dollars on the one hundred dollars, the valuation for such taxation being the true value thereof as upon a just appraisalment between debtor and creditor. The assessors are to be appointed by the regents, and may be by them removed for cause. The taxes are to be payable to the collector of internal revenue for the District, collected by him and paid into the United States Treasury, and all sums provided for from any source whatever are to be collected and paid into the Treasury of the United States in like manner; and all payments for salaries and compensations, and for other public purposes, are to be made by the Treasurer of the United States upon appropriations by Congress; and all vouchers and accounts are to be audited by, and all warrants and requisitions are to pass under the control of, the proper officers of the Treasury of the United States.

Annual reports are to be made by the regents to the President, to be transmitted to Congress, with a particular statement of the public service for the past year, the application made of all public moneys, with detailed statements of the expenses in each bureau and separate office of said government; the particulars showing the efficiency and results of administration; and with like particularity submitting estimates for the coming fiscal year to be appropriated for by Congress; and all authority to cause, authorize, or allow expenses, liabilities, disbursements, contracts, or obligations in excess in or for any year of the amount appropriated, or otherwise authorized by law of Congress for that year or subject-matter, or to use, or allow appropriations to be used, for any other purpose than those by law specifically mentioned or generally provided, is expressly inhibited.

Provisions of law are made for the better regulation and conduct of the service, prescribing, defining, and limiting the powers of the several heads of bureaus and those holding offices of authority and trust, and to secure a prompt and faithful discharge of duties from all persons connected therewith; for the proper inspection of the records of the doings of the heads of bureaus and of all officers required to keep a record and for suitable publicity of the same, and for the summary examination, in court, of any executive officer charged with neglect of duty or malversation in office to the prejudice of the public interests, and such general provisions as, it is hoped, will secure an economical and faithful administration of affairs in the District.

The "commissioners" of the District of Columbia are required to make, or cause to be prepared, suitable ordinances and regulations for the conduct of the several bureaus, and also to cause to be prepared by suitable persons, for transmission to Congress at its next session, such a digest and revision of all existing laws as are especially applicable to said District, and also to provide a systematic code of procedure and practice for the courts, and said commissioners are required to prepare and submit to the President, for transmission to Congress, a detailed estimate of the expenditures required for the year ending June 30, 1876.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 15, 1874.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 845.]

The Committee on Military Affairs, to whom was referred the bill (S. 845) for the relief of Junius T. Turner, having had the same under consideration, submit the following report:

This is a bill to pay petitioner the travel-pay of a captain of volunteers from Washington, D. C., to San Francisco, Cal., the latter place being the place of enlistment and home, the former the place of discharge. It appears this officer was denied such travel-pay because of transfer from one regiment to another, he having been discharged from the regiment in which he enlisted to accept a commission as an officer in a Maryland regiment, the Department ruling that he had, by such transfer, forfeited his claim for expenses of travel. This construction is severe and inequitable, and should not be regarded as a forfeiture, or a contravention of section fifteen, act January 29, 1813. (See extract of act accompanying report.) This officer is entitled to the travel-pay claimed, and the committee recommend passage of bill.

Section fifteen, act approved January 29, 1813, reads as follows, viz:

That whenever any officer or soldier shall be discharged from the service, except by way of punishment for an offense, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day.

Section five, act July 22, 1861, reads as follows, viz:

And be it enacted, That the officers, non-commissioned officers, and privates, organized as above set forth, shall, in all respects, be placed on the footing, as to pay and allowances, of similar corps of the Regular Army.

The above-recited law stands unrepealed upon the statutes, and remains in full force and effect.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 17, 1874.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 601.]

The Committee on Pensions, to whom was referred the bill (S. 601) granting a pension to Mrs. Janet Scott West, widow of Cato C. West, deceased, submit the following report:

This case was before the Commissioner of Pensions, who, in a letter to the committee, dated, April 14, 1874, says the claim was rejected for insufficient service, but fifty days' having been rendered by the soldier. The service rendered was in the war with Great Britain in 1812. The existing law requires a service of sixty days by the soldier to entitle his widow to a pension. A bill has passed the House of Representatives and is now pending in the Senate, which allows pensions to all the surviving soldiers of that war and to the widows of such as are dead, whose marriage occurred prior to 1850. Until that bill is disposed of, the committee are of opinion they should not entertain private bills of this description. If the law of 14th of February, 1871, is amended so as to include such survivors as served a less term than sixty days, with the usual provisions in favor of the widows of such as have died, Mrs. West's case will be covered by the new rule. It is obvious that Congress should legislate in this matter by general rule or not at all.

The committee therefore ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 21, 1874.—Ordered to be printed.

Mr. NORWOOD submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of George McCoy, praying for a pension, report:

That they find, by a letter received from the Commissioner of Pensions, that petitioner has filed his claim for a pension in the Pension-Office, and that final action has not been taken by said Commissioner, because the said petitioner has failed to furnish said Commissioner with evidence of the origin of and treatment for his alleged disability, though he has repeatedly been called on for the same.

Your committee, therefore, ask to be discharged from further consideration of said petition.

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IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1874.—Ordered to be printed.

Mr. KELLY submitted the following

REPORT :

[To accompany bill H. R. 2506.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 2506) for the relief of Rev. John R. Hamilton, report as follows :

Rev. John R. Hamilton, a resident of Erie County, Pennsylvania, and pastor of a church in Fairview, in that county, was on the 24th day of August, 1863, drafted into the service of the United States, and notified by the provost-marshal to report on the 1st day of November of that year at the place of rendezvous in Waterford, Pa., or be deemed a deserter. On the 16th day of September, 1863, he was commissioned by Governor Curtin a chaplain in the One Hundred and Eleventh Regiment Pennsylvania Volunteers. Presenting this commission to Colonel Bumford, provost-marshal-general at Harrisburgh, he asked to be relieved from the draft, but was told by that officer that his being commissioned as a chaplain would not exempt him from the draft, and that he must, notwithstanding, report for duty or pay three hundred dollars; and that failing to do so he would be deemed to be a deserter. Under these circumstances, on the 11th day of October, 1863, he paid the three hundred dollars demanded of him and proceeded to join his regiment as chaplain, and served in that capacity. Of course, the commutation-money was illegally exacted, and ought to be refunded.

The committee, therefore, recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 1071.]

The Committee on Pensions, to whom was referred the petition of Margaret O. Wells, of Richmond, Ray County, Missouri, praying to be placed upon the pension-roll, have had the same under consideration, and submit the following report:

Petitioner is the widow of James G. L. Wells, late sergeant of Company A, Eleventh, afterward Company I, Second Missouri State Militia Cavalry, who, it appears from the certificate of the Adjutant-General United States Army, was mustered into the service on the 16th of January, 1862, and was killed by guerillas, while on furlough, on the 29th August, 1863.

Petitioner applied for pension in June, 1872, claim No. 204,315, and her application was rejected by the honorable Commissioner of Pensions on October 2, 1872, on the ground that the soldier was not on sick-furlough at the time he was killed. The application filed shows that petitioner had three children under sixteen years of age at the date of her application, two of whom are still under that age.

There is no evidence in the Pension-Office or before the committee tending to show the cause of the attack upon petitioner's husband by the guerillas. In the absence of such testimony, it is fair to conclude that the state of feeling in Missouri between the Union soldiers and those in the rebel service, or those in sympathy with the cause, was such as to make it difficult to avoid such attacks. No special provocation was needed to bring on hostile collisions from the one side or the other, as the odds in favor of the attacking party might seem to warrant.

The committee feel no difficulty about the character of the furlough. A soldier is not only in service while on furlough, whether sick or otherwise, but also in the line of duty, as much as though he were in the field, provided he engages in no unlawful or hazardous enterprises, or conduct calculated to provoke attacks upon his person. It is a salutary rule to allow a soldier to visit his family as often as once a year, when, in the discretion of his superior officer, he may be released from active duty for a few days or weeks for that object, without detriment to the service.

The committee report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3193.]

The Committee on Pensions, to whom was referred the bill (H. R. 3193) repealing the act granting a pension to William H. Blair, approved July 27, 1868, submit the following report:

Blair was placed on the pension-roll pursuant to special act of Congress, approved July 27, 1868, (U. S. Statutes at Large, vol. 15, p. 425.) His pension was suspended August 18, 1870. A. B. Spaulding, a special agent of the Pension-Office, examined his case, and on the 21st of June, 1873, submitted a report to the Commissioner of Pensions, and recommended, on the evidence submitted, that the suspension continue. The latter officer, concurring in the conclusion of the report, recommends the repeal of the act. This is what the House bill accomplishes.

We have examined the report, and the evidence submitted in behalf of Blair. While there is some difference of opinion among Blair's neighbors on the point of his disability, the whole medical testimony is against the validity of the claim. Dr. Salter, who was in the medical division in the Pension-Office, certified, December 23, 1870, as follows:

"Great pains have been taken to ascertain the facts in this case. There is no apparent disability whatever. I am confident he has concluded not to work, and that the 'selectmen' of his town have determined that the United States shall support him and that they will not.

"He was pensioned under special act in 1866 or 1867, over the entire opposition of all medical men who had seen him; was stated to have necrosis of ankle. This is simply absurd, and I pronounce the whole thing a most corrupt fraud."

Two examining surgeons, of Portland, Maine, certified, on December 20, 1870, as follows:

"Blair claims that he injured his ankle in the line of duty; that he has been in constant suffering ever since; with the assistance of a cane he hobbles along; can hardly allow us to touch his ankle; says, 'it causes terrible pain;' but on succeeding in getting him interested in another direction, he is enabled to endure rough handling. This man wants to impose, but doesn't know enough. The limb in all respects doesn't differ from the other, excepting the muscular development posterior aspect is a little stronger than the other. We think he may suffer some with rheumatism, but find no evidence of this. We cannot consider this man anything but an impostor in this connection."

It appears from the report of the special agent, who visited Blair in person, that he paid \$50 to an attorney for prosecuting his claim, and

since its suspension has promised him \$50 more to obtain his restoration to the rolls, and \$25 to another gentleman.

He found, as to the petition signed by nine citizens of Pownal, Me., recommending Blair's restoration to the pension-roll, that he was indebted for goods to two of them, which he promised to pay from his pension-money; that he was also helped by the town, and agreed if he got his pension not to trouble them any more for further relief.

It further appears, that while his business as special agent was unknown to Blair, the latter walked briskly about without giving any evidence of infirmity, but as soon as the agent made known his business, he was seized with sudden lameness.

We have no doubt that whatever disability Blair may originally have had when he instituted the claim, it exists no longer, and the act giving him a pension should be repealed.

The committee, therefore, recommend the passage of the bill which repeals the act.



IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3694.]

The Committee on Pensions, to whom was referred the bill (H. R. 3694) granting a pension to Rebecca W. Taylor, submit the following report:

Mrs. Taylor is the mother of Charles Frederick Taylor, colonel of the First Pennsylvania Rifle Regiment, who fell, mortally wounded, at the battle of Gettysburgh, and who left neither wife nor child surviving him. She has a husband, Joseph Taylor, now seventy-eight years of age, and who, as she alleges, was unable to support her and himself at the time their son entered the Army. She claims a pension upon the score of dependence on her son, both before and after he entered the service.

She made application to the Pension-Office in 1872 for a pension upon the score of this dependence, which has not yet been rejected, but is not deemed by the Commissioner admissible as the case now stands, because there is no evidence on file that the son did, by actual contributions or in any other way, recognize his obligations to aid in her support. Such is the purport of the letter of the Commissioner to the committee.

In her petition to Congress she furnishes the identical evidence in support of her claim which was laid before the Commissioner.

In an affidavit which Mrs. Taylor made on May 27, 1872, in support of her claim, she swears as follows:

"That the value of their property when said son enlisted did not exceed \$3,500, clear of the liens against them. That in the year 1860 said son took the farm by verbal agreement, and bound himself thereby to maintain and support both of his parents so long as they should live; but in 1861, while actively engaged in making improvements necessarily required, the tocsin of war was sounded, and he felt it his duty to obey the call of his country, and entered the Army by raising a company, of which he was the captain, wherein he remained until the time of his death; that during his absence the proceeds of the farm were inadequate to meet the expenses incident thereto and their personal wants, but he furnished them with funds from his monthly pay to relieve them, when required; that no letters were received from him affording written testimony of his intentions to support them through life, his promises being oral, and his subsequent action by the aid rendered them was in agreement therewith and exemplified their fulfillment, and, as that mainstay and support was thus prematurely cut off, they

now feel their dependence, and she respectfully asks a favorable consideration of her claim in the evening of life."

She has a daughter, Mrs. Annie Cary, whose deposition was taken at the United States consulate at Geneva, on the 30th day of May, 1873, who swears explicitly to remittances from her brother while in the Army for the support of their mother, varying from \$27 to \$90; that her father was physically disabled, not able to maintain and support her mother, and that that mother was then quite destitute and seventy-four years of age.

Lieutenant Lamburn testifies in like manner to contributions made by the son for the support of his parents both before and after his entry into the service.

But all this testimony was before the Pension-Office, and it is possible the same doubt occurred there which has occurred to the committee.

The law requires that in order to make out a case of dependence upon her son, so as to entitle her to a pension, she should show that she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of her son or of any other person not legally bound to aid in her support; and further, that if the son by actual contributions or in any other way had recognized his obligations to aid in support of his mother, or was by law bound to such support, it should be assumed that she was dependent upon him.

The difficulty in her case is right here. By her own testimony the farm, free of all liens, was worth thirty-five hundred dollars, and belonged to her or her husband, or to both of them. The son was but a tenant, and of course his tenancy expired with his death. Had the farm belonged to the son the title would have vested in the parents, by the law of Pennsylvania, on his death. She does not show in her application, nor does any of the proof show, what has become of this property, estimated by herself as worth thirty-five hundred dollars. She makes no mention of having disposed of it, and we must infer that it still belongs to this aged couple, and if so it is a competent means for their support.

There is another matter worth notice in this connection: The battle of Gettysburgh was fought July 4, 1863, and Mrs. Taylor deferred applying for a pension until 1872, and furnishes no reason for this long delay. We submit this is a circumstance of suspicion against the genuineness of the claim.

Seeing that her application is still pending in the Pension Bureau, where she is at liberty to file additional proof if she have any, the committee recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 580.]

The Committee on Pensions, to whom was referred the bill (H. R. 580) granting a pension to Rosalie C. P. Lisle, have had the same under consideration, and submit the following report :

Claimant is the mother of the late Joseph T. Lisle, who was commissioned assistant paymaster in the Navy of the United States on the 11th of June, 1862, and died in the city of New Orleans on the 25th September, 1863, while in service, and of fever contracted while in the line of duty. So much is fully established by the records of the Navy Department.

Claimant alleges dependence upon her deceased son at the date of his death, he being unmarried, and her husband so infirm in health as to be a burden rather than support to the family, and without sufficient income for their maintenance. She further states that her deceased son made to his brother, R. P. Lisle, on entering the service, an allotment of \$50 per month out of his pay for the exclusive use and benefit of the family, and that she had received the funds so contributed, which constituted a large proportion of their means of support.

After the lapse of ten years from the death of her son claimant made application to be placed upon the Navy pension-roll, which application was rejected by the Commissioner, October 26, 1873, on the ground that claimant was not in 1863, and is not in 1873, dependent upon the sailor for support.

The evidence showing dependence of claimant upon her son is very meager, scarcely anything except her own testimony, while the papers on file in the Pension-Office disclose the fact that she was assessed for real property situate in the city of Philadelphia, in 1873, valued at \$15,000, and personal property to the amount of \$500, besides a watch, upon which she paid tax, though the real property is, or was then, under mortgage for about \$10,000.

The records of the Fourth Auditor's Office show that the said Joseph T. Lisle registered an allotment for \$60 per month for twelve months, first payment to be made July, 1863, upon which the sum of \$180 was paid to R. P. Lisle, at Philadelphia. It does not appear for whose benefit or for what account the said sums were allotted. There is no evidence that claimant ever received so much money from her deceased

son as it is alleged he had provided out of his pay for her support. No letter from him to his brother or other member of the family covering remittances for such object, or for any other object, is found among the papers. A note bearing date 18th July, 1863, informs his brother that he had the day before sent allotment and \$5, and adds: "I only wrote then to send love to all and \$5. I am afraid to send more at a time, but will send \$20 every month." The monthly allotment registered was \$60, so that it must have been made for some other purpose than the support of the family; most probably to re-imburse parties who advanced to enable deceased to procure the needful outfit for the service. Even the \$20 per month promised thereafter is not stated to be for the use of the family, though it is fair to conclude it was so intended. But there is no evidence that anything more than the \$5 was ever forwarded. The son through whom the claimant was to receive the remittances makes no statement whatever of the amount he received from his brother, or how it was employed, nor in respect to the alleged dependence of the family.

The committee conclude that the dependence is not established, and therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 1351.]

The Committee on Pensions, to whom was referred the bill (H. R. 2351) granting a pension to John B. Miller, have had the same under consideration, and make the following report:

Claimant alleges that he entered the service of the United States as a teamster, in the spring of 1846, at Point Isabel, Tex., and continued in the service during the war with Mexico. That after the capture of Monterey, and while on the road from Monterey to Camargo with the wagon-train, he received serious injuries from the kick of a mule, on the left leg, while endeavoring to aid a fellow-teamster in recovering control of his team which became unmanageable, and had stopped the train in the rear. That the injury to his leg, though it did not disable him from duty, was still very painful, and gradually grew worse until, in 1855, it became necessary to submit to amputation to save life. The operation was performed at San Francisco, Cal., by Dr. Sheldon, Dr. Gibbons, who makes the certificate, assisting in the operation.

Brevet Maj. Gen. Robert Allen, assistant quartermaster-general, under whom claimant served a portion if not the whole time he was employed as teamster by the Quartermaster's Department, in Mexico, testifies to the injury received, and at the time and place stated. There is no other testimony, except the statement of the claimant himself.

It appears from the papers before the committee that claimant filed an application to be placed on the pension-roll in 1859, upon which the then Commissioner remarked as follows:

"On examining the files of this Office, it is found that Miller applied to Congress for relief, by special act, and a report was made to the Hon. G. W. Jones, chairman of the Committee on Pensions of the Senate, April 28, 1858, showing what the records of the Quartermaster's Department furnished in relation to the service, and informing him that no provision was made by the pension-laws in such a case. The records afforded no evidence that Miller was injured by a kick from a mule, or in any other manner, while in the service."

The application was rejected at the Pension-Office, because claimant was not in the military or naval service of the United States, in other words, not intended to be provided for in the pension laws. The service was civil, not military, and full compensation paid, taking into account the hazards of the service. There is no reason why the Govern-

ment should guarantee the bodily safety, or provide compensation to those disabled in the civil service, any more than to those employed in their own business pursuits. In either case the parties are presumed to be striving to earn the highest rewards to be obtained in their respective walks of life, and the hazards are about equal. The injury alleged to have been sustained by claimant might have happened, as well, to any teamster on the road or farm, and in fact, like injuries are inflicted in precisely the same way almost every day, but no one supposes the Government to be responsible to the party injured, and if not, why should it make compensation to one in its own civil employment, working for a higher monthly allowance than is obtained by the average of such laborers throughout the country?

The committee believe there is no just claim for pension, and therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT :

[To accompany bill H. R. 3017.]

The Committee on Pensions, to whom was referred the bill (H. R. 3017) granting a pension to Jacob Grash, late a private in Company B, Eighth Regiment Illinois Volunteers, have had the same under consideration, and submit the following reasons for non-concurrence in the report of the honorable Committee on Invalid Pensions of the House of Representatives, accompanying the bill :

1st. Claimant served out his enlistment of three years, and was discharged without leaving on the records or carrying with him any evidence tending to show disability or injury to his system, permanent or otherwise.

2d. The medical records show that he was thrice in hospital during his term of service, and returned to duty, but never treated for the injury or disease of the veins of the leg, now alleged to be the main cause of the disability under which he suffers.

3d. The affidavits of Dr. D. H. McCord, claimant's family physician from 1856 to 1861, and Capt. P. Schlosser, his company commander, are relied upon not only to supply what the records fail to show, but to overrule and set aside the records themselves.

The former states that claimant was in good health when he went into the service—it does not appear that Dr. McCord made the statement upon a careful examination, but upon the appearance and general condition of claimant at the date of his muster into service—and the latter only testifies that claimant became disabled from performing military duty while in service “by reason of the veins of his left — becoming swollen to such a degree that they became *varicose*.” The captain does not state at what time during the service this disability occurred, nor what disposition was made of the soldier while so disabled. If sent to hospital for treatment, it must have been to some hospital whose records are not on file in the Medical Department; for as often as the records show him to have been in hospital, it was for the treatment of some other injury or disease than the one here specified as the cause of disability. It is submitted that the testimony of the two witnesses, so meager and vague on the main points, is hardly sufficient to outweigh the record evidence in the case.

The committee therefore recommend that the bill do not pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2355.]

The Committee on Pensions, to whom was referred the bill (H. R. 2355) granting a pension to Ann R. Voorhees, have had the same under consideration and submit the following report:

Claimant is the widow of Philip F. Voorhees, late a captain in the Navy of the United States, who entered the service as a midshipman, on the 15th of November, 1809, and after forty-four years of service, and sundry promotions, was retired on furlough-pay, in 1855, and died at Annapolis, Md., on the 26th February, 1862.

Claimant states that her husband died of injuries contracted while in the service and the line of duty, to wit, while serving on board the frigate United States, Commodore Decatur commanding, in pursuit of the enemy, he ruptured a blood-vessel, by extraordinary exertions in the use of a speaking-trumpet, while on the deck of said vessel, and from the effects of which he never recovered, reducing him to a low state of health, and inducing other diseases, which finally terminated in his death. This fact is known to your memorialist and other members of his family.

The record of Captain Voorhees has been obtained from the Navy Department, which shows an honorable service of 36 years, when he was, in September, 1845, reprimanded and suspended from command for five years, for illegal punishments and disobedience of orders, which suspension was removed, January 7, 1847; total sea-service, 21 years 5 months; total shore-duty, 3 years 6 months; unemployed 27 years 5 months. Total time in service, 52 years 4 months. During this whole period, more than half of which claimant's husband was not on duty, either at sea or on shore, there is no evidence that he was on sick-leave, or complaining; nor is there any evidence furnished by any surgeon of the Navy or physician showing that he was ever under treatment for the injury of which it is alleged he finally died. And when the date of the injury is considered, it seems somewhat doubtful whether it was the cause of his death. The rupture of the blood-vessel occurred while in pursuit of the enemy, on board the frigate United States, which must have been prior to December, 1814, when Midshipman Voorhees was promoted to a lieutenant, and detached from that vessel. He was then thirty-nine years in service after the alleged injury before he was retired, and even then it does not appear that he was placed on the retired list because of any disability resulting from injuries or sickness contracted in the service or otherwise. He was probably sixty-five years of age; and claimant states in her petition that her husband applied for

active duty on the breaking out of the rebellion, which indicates that his health must have been good at his advanced age, to think of entering upon active duty.

There is no account of his death, or of what disease he died, nor any evidence, which, in the judgment of the committee, brings the claimant within the spirit of the pension-laws. The indefinite postponement of the bill is therefore recommended.



IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 1953.]

The Committee on Pensions, to whom was referred the bill (H. R. 1953) granting a pension to William D. Morrison, make the following report :

The papers accompanying the bill granting a pension to William D. Morrison show that he was commissioned as captain of Company D, Seventh Regiment Maryland Volunteers, August 28, 1862, and that he served in said regiment until his discharge in February, 1865. Said Morrison states in his affidavit, that while on duty on the Upper Potomac with his regiment, in the fall of 1862, he was ordered with his company to McCoy's Ferry, and that while there he contracted chronic diarrhea, which has remained ever since. He further testifies that while in the line of his duty he was, by an accident on the Northern Central Railroad, so severely injured in his right knee and left hip as to cause his discharge, and from which he is still suffering.

Robert K. Robinson, M. D., late surgeon of said Seventh Regiment Maryland Volunteers, testifies that he was well acquainted with said Captain W. D. Morrison before and after he entered the United States service as captain in said regiment; that said Morrison's health was good when he entered the Army, but that when said regiment was on duty on the Upper Potomac, near McCoy's Ferry, said Morrison was attacked with diarrhea, for which he treated him, but on the usual exposure necessary in active service, it often returned, and about the time of the battle of Gettysburgh, Pa., he was suffering so much that he was put on light duty for some time in the city of Baltimore; that when he returned to his regiment in 1864, and went into active service in the Wilderness, the disease assumed a chronic form, for which he was sent to the hospital.

S. Parker Bosley testifies that said Morrison was captain of Company D, Seventh Regiment Maryland Volunteers, and that he was wounded and contracted diarrhea while in said service.

Charles E. Phelps, late member of Congress from the third district of Maryland, testifies that he was the colonel of the Seventh Regiment Maryland Volunteers, and that he has attentively read the claim of said Morrison for a pension, and that he believes it to be a just and meritorious one. He further testifies that said Morrison was uniformly conscientious, efficient, and resolute—no more reliable or gallant officer served under him.

The Commissioner of Pensions has rejected said Morrison's application for a pension by reason of report of examining surgeon that no disability, such as was alleged, exists, and that there is nothing to show

continuance of disability subsequent to discharge; but the evidence fully shows that he was honorably discharged on account of disability, and that he is disabled, from injury and disease contracted while in the service, to the extent of disqualifying him for any continued manual labor.

The committee recommend the passage of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3691.]

The Committee on Pensions, to whom was referred the bill (H. R. 3691) granting a pension to James Burris, respectfully report :

The evidence shows that James Burris, while in the line of his duty and in the service of the United States, as a private in Company F, Thirty-second Regiment, United States Colored Troops, on the Georgetown raid in the State of South Carolina, on or about the 30th day of March, 1865, was struck in his left breast by the hames of the saddle-mule of a mule-team which was running at the double-quick; that he was treated in hospital for this said injury by Surgeons Braddish and White; that said Braddish died before leaving the Army, and that said White is dead or gone to parts unknown, so that it is impossible to obtain his evidence as to treatment; that he has made diligent search and inquiry, but is unable to find any of the officers of his company or regiment, and that the evidence of two of his comrades is the best evidence he can procure.

William Nesbit and John Alexander testify that they were well acquainted with James Burris for several years before he entered the service, and that they know he was a man of sound bodily health prior to his enlistment; and that said Burris came home complaining of his side and of delicate health; and that said Burris is a sober, upright man, and that his disease has not been prolonged by intemperance or other bad habit on his part.

Robert E. Carle and David Taylor testify that they belonged to the same company and regiment with said Burris, and that said Burris was injured by a mule-team in the manner, and in the place, and at the time as stated by him.

Assistant Adjutant-General Vincent reports that his records show Robert E. Carle and David Taylor to have been privates of Company F, Thirty-second Regiment, United States Colored Troops, and present for duty during the month of March, 1865.

William M. Findley, M. D., testifies that he visited James Burris professionally soon after his return home from the Army, and found him suffering from chronic disorders, the result of an injury received while in the service of the United States; that he has attended said Burris from the date of his discharge, more or less, up to the present time. Dr. Findley further testifies that said Burris was sound and healthy when he enlisted, and entirely free from disease or injury in his left side, and

that said Burris's injury has not been aggravated or prolonged by any bad habit, practice, or intemperance.

Assistant Adjutant-General Vincent reports that the records of his office do not show that said Burris was wounded or sick while in the United States service; but the Surgeon-General United States Army reports that his records show that said Burris was admitted to the Second Division general hospital at Beaufort, S. C., May 28, 1865, from camp, for treatment.

The Commissioner of Pensions has rejected said Burris's application for the reason that satisfactory medical evidence had not been furnished, showing treatment for said injury, while in the United States service; but as no better medical evidence can be furnished for the reasons above stated, the testimony of Carle and Taylor appears to be sufficient on that point, and the committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 1820.]

The Committee on Pensions, to whom was referred the bill (H. R. 1820) granting a pension to Samuel Henderson, respectfully report :

In the case of Samuel Henderson, who enlisted as a private in Company G, One hundred and second Ohio Volunteers, the evidence is as follows :

Aaron Waite testifies that he was captain of said company, and that he knows of his own personal knowledge that while said company and regiment were encamped at Nashville, Tenn., on or about the 9th day of May, 1864, and that while the said Samuel Henderson, after he had come in off picket duty, was sitting on a high stool, leaning forward with his elbows resting on his knees, and his head resting on his hands, one Jacob Tenocker, another soldier, jumped astride of the said Samuel Henderson's neck, and catching him under the legs with his hands doubled him up in such a manner and threw him about so as to strain him in the spine and cords of his back and neck so as to affect his back and kidneys badly, and affected his neck and head to that extent that he lost the entire use of his left eye, and that he has become so badly affected from said injury that it has produced curvature of the spine, and a large lump has grown on the right side of his back. Said Waite further testifies that said Henderson was a stout, hearty man at the time of his enlistment, and that said Henderson received his said injury while in the service of the United States and in the line of his duty, and not in consequence of any fault or negligence on his part; that said Henderson was discharged in consequence of said injury on the 13th day of March, 1865.

Joel Pomerene, M. D., testifies that he knows of his own personal knowledge that the said Samuel Henderson was badly injured in the spine and leaders of his back and neck in the service of the United States, for in the fall of 1864 he treated said Henderson for spinal affections and injury to his back, and has treated him since his discharge from the service; and that on account of his said injury he has lost the entire sight of his left eye, and that the injury to his back has produced curvature of the spine, and a large lump has been formed on the side of his back over the right kidney, so that he now has to walk crooked, leaning to the left side; and is now and has been for years past entirely disqualified from performing manual labor, and that his spinal affection is becoming worse.

The Commissioner of Pensions has rejected said Henderson's applica-

tion, for the reason that the Adjutant-General refuses to amend his record so as to show that Henderson received his injury while in the line of his duty. The Assistant Adjutant-General, in his report, says :

The words "line of duty" can only be entered upon record when it is satisfactorily established that a soldier was, while in the performance of military duty, under orders from his superior officer, injured from causes incident to the duties so performed. From the evidence, it appears that Henderson was in camp, in his tent and not on duty, when the injury was received which resulted in his discharge, by another soldier jumping astride his neck.

As the evidence clearly shows that said Henderson received his injury while in the service of the United States, and without any fault or negligence on his part, the committee think the case is within the spirit of the pension laws, and recommend that the bill do pass.



IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. WADLEIGH submitted the following

R E P O R T :

[To accompany bill H. R. 3170.]

The Committee on Patents, to whom was referred the bill (H. R. 3170) for the relief of John W. Marsh, having had the same under consideration, report:

This bill authorizes the Commissioner of Patents to extend, for the period of seven years from its passage, the patent of John W. Marsh for a trimming-attachment to sewing-machines, issued to him October 27, 1857, and re-issued September 6, 1859. It also provides that no person or corporation shall be held liable for the infringement of said patent, if extended, for having used the invention after the expiration of the patent and prior to its extension, and validates the contracts made by the patentee for the use of said invention.

The invention forms no part of the sewing-machine itself, but consists of a knife which may be attached to the machine and operated in connection with the needle. It is not adapted for use on the ordinary family sewing-machines, but only on the heavy machines for manufacturing certain kinds of ladies' and misses' boots and shoes. That its use cheapens the cost of manufacturing such goods is shown by the affidavits of leading manufacturers. The applicant is a mechanic in humble circumstances, with a family dependent upon his daily labor for support. His poverty and obscurity, with the discouraging opposition which he encountered, prevented his making application for an extension of the patent within the time limited by law. Your committee believe that he used all the means in his power to put his invention before the public and render it profitable, but that he has never realized any substantial profit from it. No opposition has been made to the bill so far as your committee know, and the evidence shows that the applicant has made no assignment of the invention.

Under these circumstances, your committee recommend the passage of the bill without amendment.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill H. R. 3181.]

The Committee on Claims, to whom was referred the bill (H. R. 3181) for the relief of Mrs. Mary A. Thayer, have had the same under consideration, and submit the following report:

The facts upon which it is proposed to grant this relief are stated, in substance, in the report of the House committee, accompanying this bill, as follows:

That Mrs. Thayer removed to Washington from the State of New York early in the year 1862; that from August of that year, after the second battle of Bull Run, she commenced her labors as a nurse, visiting numerous battle-fields, where she aided in taking care of wounded Union soldiers, aiding also in their transfer to the various hospitals to which they were assigned, especially after the battles of South Mountain and Antietam—among the wounded at the last-named battle being General Joseph Hooker, whom she aided in removing to a hospital, and caring for him afterward; that she was present at the battle of Chancellorsville, and after the battle returned with the wounded to Washington, where she remained the greater portion of the time, until the battle of Gettysburgh, where she was occupied in caring for wounded soldiers and looking after their transfer to various hospitals; that she continued her visits to the hospitals and camps in and about Washington until the spring of 1864, when she went to Belle Island, at the request of Secretary Stanton, to assist in caring for and removing the released and exchanged prisoners of war, accompanying many to Annapolis, where she remained for a considerable time, paying her own board, and furnishing to the sick many articles not provided by the Medical Department. Subsequently Mrs. Thayer twice visited Andersonville, where she was occupied in caring for sick and suffering Union soldiers, returning from thence to be present after the battles of the Wilderness, where she labored zealously and faithfully in caring for the wounded, aiding in their removal from the burning woods, her own life being frequently endangered by fire, her clothing on several occasions taking fire. Mrs. Thayer continued her noble work until some time after the close of the war, and while residing in Washington was constantly engaged in relieving the wants of sick and wounded soldiers, obtaining from her father and personal friends means to do this, and using from her own scanty means also in this cause.

Among the numerous testimonials as to Mrs. Thayer's services is the following:

"WASHINGTON, February 18, 1874.

"To whom it may concern:

"The bearer of this note, Mrs. Mary A. Thayer, was for several years a visitor of Armory Square hospital during the late war, and was a most valuable nurse, expending her means freely, and laboring constantly for the care of the sick and wounded.

"Mrs. Thayer was specially fitted for this service, always performing her labors in a conscientious, effective, and unostentatious manner. I do not hesitate to say that she is one of the few deserving women whose services were invaluable to the Government and cause of humanity.

"D. W. BLISS, M. D.,
"Bet. Col., late Surgeon in Charge United States General Hospital,
Armory Square, Washington."

There is considerable evidence from Army officers, as well as private soldiers, showing that Mrs. Thayer was unwearied in her labors and efforts for the sick and wounded soldiers of the Union, and also from civilians who were engaged in or connected with soldiers' relief associations and commissions.

The following sworn statement of H. H. Sperry, esq., for many years file-clerk of the House of Representatives document-room, is also given as showing the character of Mrs. Thayer's labors:

"24 TRINITY PLACE,
New York, February 20, 1874.

"My first acquaintance with Mrs. M. A. Thayer was in the summer of 1862, about the time of the battle of Manassas, when the wounded soldiers were being brought to Washington. At that time I, with a number of others from my State, was devoting most of my time in the care of our wounded, scattered throughout the city—in churches, private houses, Capitol, and hospitals. Wherever I went I saw Mrs. Thayer doing her work of benevolence. I have met her at the cars where the wounded were being transferred to ambulances and carried on stretchers to the places designated, and seen her follow them with such comforts as she could obtain, and tend them with a mother's care. The same course was pursued after the battles of Antietam and Chancellorsville, and at others she was specially active. Her home was the home of many crippled and despairing soldiers, and wherever she could be useful she was willing to go.

"I have a distinct recollection of her benevolent exertions after and during the battles of the Wilderness, and throughout the entire season of 1864. She was not only useful in the hospitals and by the bedside of the sick, but often attended to the embalming and shipment to friends of the dead bodies of our soldiers.

"I have no means of knowing the fact, but I supposed at the time that she must draw largely from her own means to carry out her benevolent schemes.

"H. H. SPERRY.

"Sworn before me this 21st day of February, 1874.

"WILLIAM H. CORTELYOU,
Notary Public, Kings County."

Mrs. Thayer is now in reduced circumstances, and asks that Congress will recognize her services and grant her something as compensation for the same, as well as re-imburse her to some extent for money expended in ministering to the wants of sick and wounded soldiers.

With these findings before us it is proper to note a few matters which may or may not be of importance in view of the conclusion reached by your committee.

First. The fact that she visited Belle Island, at the request of Secretary Stanton, is without support save in the statement of the petitioner. If, however, the case rested upon this fact alone, we cannot see that it would necessarily change the result reached by your committee.

Second. It appears that the petitioner was the agent of the New York Soldiers' Relief Association, to solicit supplies, and did obtain the same from time to time. By such connection she was given great opportunities "for dispensing benefits which could not have been derived from any other source." It also appears that she very frequently obtained stores from the Patent-Office building in the city of Washington, where goods were kept for the various relief associations, the witness stating that she was "there every day or two, when she was not out of the city, getting things for the hospital, and that she accompanied goods for the sick and wounded to the front."

Third. That while the bill appropriates \$2,000, "as compensation for services rendered in taking care of wounded Union soldiers during the late war, and in re-imbursement for money expended by her in supplying the wants and necessities of said soldiers," there is an entire want of evidence as to how much of her own means she did expend. The evidence, it is true, shows generally that she was expending money, but whether \$100 or \$1,000, more or less, we have no means of knowing. And now the question is whether, according to this good lady the utmost devotion to the work in which she was engaged—conceding that she was actuated, in the language of one witness, by the most disinterested prompt-

ings of philanthropy—she is entitled to the relief asked. We are well aware that to deny this relief is a most ungracious task, and if engaged in the mere work of benevolence, influenced alone by the promptings and feelings which spring up spontaneously in all hearts in sympathy with the cause of the Union, we could find our way to its allowance. We must be governed, however, by other considerations when asked to vote money from the public treasury. Ours is a strict trust, and, in its discharge, we are not warranted, by any means, in granting relief in all cases of need, however strongly they may appeal to our better natures.

It may be conceded that Mrs. Thayer was among the most worthy of a most meritorious class of devoted and Christian women, who, in camp, field, hospital, and on the march, contributed not a little to assuage the asperities of war and to administer to the relief of our sick and wounded soldiers. There were hundreds of these, however, who went out from their homes, sometimes unbidden by others, again as agents of relief associations, or at the request of societies and communities, who spent days and weeks and months in this noble work. It is to their praise that they gave, in most instances, their time and means from the purest and most philanthropic motives, without reward, or the hope thereof, from the Government. Indeed, to suppose that expected pecuniary consideration led them to the good work would detract largely from the high and exalted position accorded to them by an undivided public sentiment. The work performed, though most important and never to be forgotten, was no more than devolved upon every other true and loyal citizen of the land. It differs only from the increased sacrifices made, from the generous offerings made by those who remained at home, of provisions, clothing, sanitary stores, and other like comforts, through associations and individuals, for the relief of our soldiers; and it seems to us that it would be quite as just, and quite as much within the duty of the Government to pay for the one as the other. No government can undertake to compensate for all such offerings; for to do so, to say no more, would make it an involuntary debtor, and the very act would detract not a little from the high and patriotic motives which, it must be presumed, influenced these recognized public benefactors. All such persons must find their reward in the consciousness of duty well performed, rather than any sum of money which might be voted them from the public treasury.

As the work thus performed by them is voluntary, not to be enforced by any positive law, so it seems to us to be better and safer for the public interests, as well as more complimentary to the great devotion thus voluntarily manifested, that they should find their compensation in the approving verdict of a nation saved, rather than in a pecuniary compensation at the hands of a Government which all should love and all labor to maintain.

We are, therefore, constrained to conclude, though ungracious the task, and strong our sympathies for the petitioner, that the relief should not be granted; and we therefore recommend that this bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3728.]

The Committee on Pensions, to whom was referred the bill (H. R. 3728) granting a pension to Abby A. Dike, submit the following report:

John H. Dike, the husband of the beneficiary of this bill, was captain of Company L, Sixth Regiment Massachusetts State troops, and while marching with his company through Baltimore on the 19th April, 1861, the troops were attacked by a mob, several killed, others wounded; among the latter Captain Dike, who received a gunshot wound in the leg, which disabled him from further service, and, as is claimed, contributed to his death, which occurred April 27, 1871. It is alleged in Mrs. Dike's petition, and abundantly proved, that he was a sound, healthy man, about 27 years of age, when he entered the service, and that he suffered from this wound continually until the period of his death. He was one of a firm doing a large and prosperous business as a shoe manufacturer, when, in response to the call for troops, he raised a company at Stoneham, Mass., and marched it, from 2 o'clock in the morning, to the State-house in Boston by 11 o'clock, and reported to the adjutant-general, by whose orders the company, originally Company C of the Seventh Regiment, was attached to the Sixth Regiment, and left that afternoon for Washington. The adjutant-general of Massachusetts, in his report, says:

Two days afterward, on the 19th of April, during that gallant march through Baltimore, which is now a matter of history, Captain Dike was shot down while leading his company through the mob. Several of his command were killed and wounded, and he received a wound in the leg which will render him a cripple for life.

The widow's claim to a pension was rejected by the Commissioner, on the ground that the immediate cause of the soldier's death, pneumonia, originated after discharge from the service.

On the contrary, several medical gentlemen, one of them late surgeon of the Fifty-fifth Regiment Massachusetts Volunteers, give their professional opinions that the wound of Captain Dike seriously undermined his general health and contributed materially to shorten his life; and that the disease of which he died was aggravated to such an extent by the state of his general health, resulting from the wound, that the previous injury may be fairly set down as having contributed to his death. One says:

Though his death cannot be directly traced to it, (the wound,) yet the loss of vital powers and general enfeebled state of his system resulting from the injury and subsequent sickness, rendering him unable to cope with disease, I think will justify me in expressing the opinion that the wound he received at Baltimore exerted an important agency in producing his death.

There is a mass of unprofessional testimony proceeding from those intimately acquainted with Captain Dike—his father, brother, boarders in the same house during his last illness, the selectmen of Stoneham, officers of his company and of the Sixth Regiment—all concurring in the opinion that the remote cause of his death was the wound received, and that his life was shortened thereby. Two say his leg looked withered and was a good deal smaller than the other, and at times was very painful. Two others swear that they boarded in his family for nine months during the last year of his life; that he suffered intensely from his wound, and they express their belief it caused his death.

We cannot, if we were so disposed, shut our eyes to the force of this proof. The medical evidence, especially, cannot be disregarded. These physicians, his neighbors, who knew his condition before entering the service, and since then to the period of his death, agree that his wound hastened his death in the manner and for the causes they assign. If there still remain doubts whether the proofs bring his case strictly within the purview of the pension law, we think the widow of so patriotic an officer should have the benefit of them.

The committee therefore recommend the passage of the House bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill H. R. 3689.]

The Committee on Pensions, to whom was referred the bill (H. R. 3689) granting a pension to Bernard Sailer, submit the following report :

The bill gives a pension to Bernard Sailer, as the dependent father of Philip Sailer, late a private in the Ninety-eighth New York Volunteers, who was killed in battle, as alleged, in September, 1864. The bill is not accompanied by any proof. Moreover, the Commissioner of Pensions, in his letter of 23d December, 1874, informs the chairman of this committee that a careful search of the records of his Office fails to show that such a claim has ever been filed there. That Office is the appropriate place to which such a claim should be addressed, and is furnished with greater facilities for properly determining its merits than this committee possess. It would be a rare case, indeed, falling under this head, that the committee would feel justified in passing upon, unless the experiment had first been made at that Office. They therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 888.]

The Committee on Pensions, to whom was referred the bill (S. 888) directing that the name of James Brown, of Oregon, be placed on the pension-roll, submit the following report:

The bill asserts that James Brown was a teamster in the escort of Government officers to California in the year 1849. The letters filed with the bill constitute the only proofs in the case, and they show that he was one of the party that escorted General John Wilson, sent to San Francisco, as navy agent, and Neal Johnson, Indian agent, in the year 1849, and that he lost his arm on the trip at the crossing of Pitt River by the accidental discharge of a gun. The letter of Mr. Wilson says that Brown was in the service of the United States as part of a detachment of troops which, by orders of the Government, escorted them as navy and Indian agents to California; that he was competent and faithful, and that he lost his arm in this service, but in what manner, and through whose fault, neither he nor any of the other letter-writers show. Another writer says he has found him to be a faithful and efficient messenger and expressman. Still another describes him to be a perfect gentleman.

Assuming that these letters can be received as evidence, and that they express the whole truth, it will be seen at once they lay no ground for a pension. If he was in the employ of the Government, it was probably as a civilian, for no reference is made to any enlistment, and as a civilian merely he cannot be pensioned. Whether or not his carelessness contributed to his accident we are not informed. Why, if his case was a proper one for a pension, he should have deferred making application for twenty-four years is inexplicable, or, at least, is unexplained. If his case is any better than the papers put on file make it, it is his own fault, for certainly he has had ample time since 1849 to make it strong. The committee recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 6, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2156.]

The Committee on Pensions, to whom was referred the bill (H. R. 2156) granting a pension to Nathan A. Winters, submit the following report:

Winters was captain of Company K, Forty-fourth Missouri Volunteers, and met with an accident on the railroad, on the 1st of September, 1864, fracturing his arm above the elbow.

He applied for a pension, but his claim was rejected on February 3, 1873, because, according to the letter of the Commissioner, it appeared from the evidence on file that Winters was not in the service of the United States at the date of the injury. And this is the first question upon which the committee are required to pass. His commission from the governor of Missouri bears date of December 14, 1864, but states that he was to rank as captain of the company from September 10 of that year. Across the face of the commission is written as follows:

“Mustered into the service of the United States, at Rolla, Mo., October 14, 1864. R. A. Collins, lieutenant Twenty-third Infantry, Missouri Volunteers, A. C. M.”

His discharge bears date the 27th of March, 1865, and in that it is certified that Captain Winters was enrolled on the 14th day of October, 1864, to serve six months, and that he was discharged from the service on the 22d day of March, 1865, by reason of expiration of term of service. On the discharge it is indorsed that he was paid in full March 27, 1865.

The adjutant-general of Missouri certifies that Winters enrolled and joined for duty as captain of said company, on October 14, 1864, by virtue of the commission above set forth, and that he was mustered into service the same day at Rolla, and paid accordingly. He adds that the records do not show that Winters was ever wounded while in service; that the Forty-fourth Regiment was organized in accordance with General Orders No. 134, of July 28, 1864, and August 9, the same year, and that Captain Winters received his authority to recruit from Colonel Bradshaw, who by said order was made colonel of the Forty-fourth Missouri Volunteers.

The Adjutant-General of the United States certifies to the Commissioner of Pensions, under date of October 31, 1870:

It does not appear that N. A. Winters was an officer of the Forty-fourth Missouri Volunteers, in any grade, at the date he alleges to have been wounded, (September 1, 1864,) he having been commissioned captain Company K, said regiment, September 14, 1864, and mustered in as such from civil life, October 14, 1864. Regimental return for September, 1864, reports him “captain, commissioned September 14, 1864, not mustered—absent, sick.” He mustered out March 27, 1865, to date March 22, 1865.

Major DeBolt, of that regiment, testifies that Company K was organized in Grundy County, Missouri, on or about the 15th day of August, 1864; that Winters was elected captain at its organization, and commanded the same until on or about the 1st of September, when he was wounded on the Hannibal and Saint Joseph Railroad.

Winters swears to the same facts, and adds that he knows not the reason why he was commissioned to rank from September 10, 1864, only. In another affidavit he swears that he arrived at Saint Joseph, with his company, on or about August 24, 1864, and that on the 1st day of September following he started from the above-named place over the railroad for Livingstone County, for the purpose of recruiting, and that while traveling on the road he was wounded near Hamilton by an obstruction *left by the roadside*, breaking or fracturing his left arm above the elbow and extending to the elbow-joint, greatly impairing the use of the arm, and that this occurred without any fault on his part, and while in the line of duty and acting under orders from his commanding officer. In a subsequent affidavit he swears that he was not treated by any regimental surgeon, nor in any United States hospital, but by other physicians, naming them. In still another affidavit he swears that the reason why he was not mustered into service as captain of said company before the date of the injury was that he was ordered off on recruiting service before he had an opportunity of being mustered in. In yet another affidavit Winters swears that the fracture in his arm was caused by an obstruction *left on the track* of the Hannibal and Saint Joseph Railroad.

Dr. Warner Johnson, the family physician, swears that the *humerus* of Winter's left arm received a compound comminuted fracture caused by a *collision of railroad-cars* and disabling him to a great extent.

Colonel Bradshaw, of that regiment, gives an entirely different version of the injury, and his statement purports to be founded upon his "personal knowledge" of the facts. His statement is as follows:

On or about the 10th day of September, 1864, I, as colonel of the aforesaid regiment, ordered Capt. N. A. Winters to proceed to Chillicothe, Mo., by rail, for the purpose of collecting such recruits as were there awaiting transportation to Saint Joseph, there to be mustered into the service of the United States as recruits of the above regiment. While on the cars, *en route to Chillicothe, the passengers' coach was thrown from the track and a number of passengers wounded*, among whom was Capt. N. A. Winters, who had his left arm broken above the elbow. The above injuries were received in the line of his duty as an officer of the Forty-fourth Infantry, Missouri Volunteers.

The soldier received but one railroad injury. If that was upon the 1st day of September, as all the testimony goes to show, then this last witness was clearly mistaken when he swears that he had personal knowledge that it was upon September 10.

Again, he swears that the passenger-coach was thrown from the track and a number of passengers injured; whereas the family physician swears that it was the result of a railroad *collision*. And Winters himself swears the wound was caused by an obstruction left on the track. And in another affidavit swears that the obstruction was left by the roadside, creating the impression that his elbow was projecting from the window and came in contact with some upright object near the track while the cars were in motion. The statements of the different witnesses as to the manner of the injury, which we have italicised, are wholly at variance with each other. The presumption that Winters's injury may have resulted from his own carelessness is not rebutted by a single witness, so far as we can find, although it would seem there should be no difficulty in establishing the fact, if it were true, by the railroad employés on the train and by the passengers, that either a col-

lision took place, as Dr. Johnson swears, or that the coach was thrown from the track and a number of passengers wounded, as Colonel Bradshaw swears. Besides his own evidence, there is no direct proof that Winters's carelessness did not contribute to his injury. Because of this doubt we should be slow to allow him a pension. But beyond this the evidence is satisfactory, nay, the fact is placed beyond a doubt, that he was not in the service of the United States at the time he received his injury. He pretends that he was prevented from being mustered into the service because of his enforced absence on recruiting-duty. But his own commission shows that he did not enter the service until ten days after receiving the injury. He was not paid for the time covered by his injury. He was not treated for it by any Army surgeon. He was not in any Army hospital.

For these reasons the committee concur in the decision of the Pension-Office, and recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2427.]

The Committee on Pensions, to whom was referred the bill (H. R. 2427) granting an increase of pension to Mary W. Shirk, widow of James W. Shirk, deceased, late commander in the United States Navy, submit the following report :

Mrs. Shirk was pensioned on the 2d of May, 1873, at the rate of \$30 per month, with \$2 additional for each child, making \$36 per month, which she has received since that date, as widow of Commander Shirk, and the mother of three minor children. This bill increases her pension to \$50.

In her memorial to Congress, the basis of the present bill, she sets forth the services of the husband and her claim to an increase of pension as follows :

That her deceased husband entered the Navy of the United States in the month of March, A. D. 1849, and continued in the service until his death on the 10th day of February, A. D. 1873.

That during the whole period of the war of the rebellion her said husband was in active service; that, in 1861, he was on board the Saranac in the Pacific, from which ship he volunteered his services for sea on the Atlantic side during the rebellion; he returned home during the latter part of August, and on the 6th day of September, 1861, reported at Saint Louis to Captain (afterward Rear-Admiral) Foote. On the 1st day of January, 1862, he was appointed to command the gunboat Lexington; on the 22d of January, accompanied General C. F. Smith on a reconnaissance up the Tennessee River, and on that occasion threw the first shot and shell into Fort Henry; while he commanded the Lexington he participated in the engagement at Fort Henry, (after which the Lexington penetrated the rebel lines as far as Florence, Ala.) the destruction of rebel works at Pittsburgh Landing on March 1, 1862; the evacuation of Columbus, Ky., March 4, 1862; the battle of Shiloh, April 6 and 7, 1862; the battle of Saint Charles, on White River, Arkansas, June 17, 1862; clearing the Yazoo River of torpedoes for ten days previous to the landing of General Sherman's army; Haines' Bluff, December 27, 1862; Chickasaw Bayou, December 28, 1862, to January 1, 1863, inclusive, and in two engagements at Arkansas Post on the 10th and 11th of January, 1863. In February, 1863, he was transferred to the command of the Tuscumbia; he passed the Vicksburg batteries the 16th of April, 1863; fought the battle of Grand Gulf for five hours, on the 29th of April, and which his commanding officer said was the best stand-up fight of the war. He was engaged in the combined attack on Vicksburg on the 2d of May, 1863; and was, in the words of Rear-Admiral Porter's report to the Navy Department, "almost constantly under fire of the batteries at Vicksburg since the forty-five days' siege commenced." In December, 1863, at the request of General Sherman, he was detailed by Rear-Admiral Porter to command the Tennessee District of the Mississippi Squadron, in which command he remained until December, 1864, when, the war being over in the western rivers, he applied to be detached from that squadron. He was favorably mentioned by General Grant in his report of the battle of Shiloh, and of the operation which resulted in the capture of Vicksburg; he re-

ceived, through Admiral Foote, the thanks of the Navy Department for his services at the battle of Shiloh, and was several times favorably noticed by Rear-Admirals Foote, Davis, and Porter, and also by name in the annual report of the Secretary of the Navy, dated December 1, 1862.

That the service in which her said husband was engaged, although hazardous, arduous, and requiring the exercise of the highest talents and courage, was not of any pecuniary advantage, and gave him few of the opportunities for prize-money which occurred to many other officers.

That her said husband died leaving but a small amount of property.

That he left surviving him your petitioner and three children, now of the respective ages, eleven, eight, and four years.

That by the existing laws his family is entitled to a pension of only thirty-six dollars per month, which is entirely inadequate to their support and the suitable education of the children.

That the said husband died of a disease contracted during the war and in the performance of his duties.

The claimant has also furnished the following extracts from the report of General Grant, made at Pittsburgh Landing on April 9, 1862:

It becomes my duty again to report another battle fought between two great armies, one contending for the maintenance of the best Government ever devised, the other for its destruction. It is pleasant to record the success of the army contending for the former principle.

The most continuous firing of musketry and artillery ever heard on this continent was kept up until night-fall, the enemy having forced the entire line to fall back nearly half-way from their camps to the landing. At a late hour in the afternoon a desperate effort was made by the enemy to turn our left and get possession of the landing, transports, &c. This point was guarded by the gunboats Tyler and Lexington, (Captains Gwinn and Shirk, U. S. N., commanding,) four 20-pounder Parrott guns, and a battery of rifled guns, as there is a deep and impassable ravine for artillery and cavalry, and very difficult for infantry at this point.

No troops were stationed here except the necessary artillerists and a small infantry force for their support.

Just at this moment the advance of Major-General Buell's column (a part of the division under General Nelson) arrived, the two generals named both being present; an advance was immediately made upon the point of attack and the enemy soon driven back.

In this repulse much is due to the presence of the gunboats Tyler and Lexington, and their able commanders, Captains Gwinn and Shirk.

The President of the United States addressed the following letter to the House Committee on the 19th of May, 1874, in relation to this claim:

The late Capt. James W. Shirk served in command of a gunboat on the Mississippi River while I was in command of the forces operating against Vicksburg and vicinity. He was among the first in running the blockade at Vicksburg and Port Hudson; was always attentive, active, willing, and efficient, never faltering from any duty.

If relief can properly be given his family, it will be bestowed upon a worthy widow and children, and will be an expression of appreciation of the valuable services of a very efficient officer of the Government.

It is needless to submit any more of the evidence on file as to the meritorious conduct of Commander Shirk. His achievements have passed into history and are familiar to the Senate and the country. For the purposes of this case, we assume all to be true which is stated in the memorial and evidence, and the question is, should the pension of his widow be increased to \$50 per month? The general rule, as long since fixed by Congress, is that "the pension for total disability for lieutenant-colonel and all officers of higher rank in the military service and in the marine corps, and for captain and all officers of higher rank, commander, surgeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding, and master commanding in the naval service," shall be \$30 per month. That would have been the extent of the pension which Commander Shirk could have received for total disability, incurred while in the service and in line of duty, had he applied for one.

The same rule which fixed his pension for total disability fixes his widow's at \$30 per month, when it is established that his death was in consequence of any wound, injury, or disability incurred in the service. She recognized this rule in her application for a pension, claimed and obtained the benefit of it, and of the other rule established for minor children under sixteen years of age. She has obtained, therefore, all the advantages which the general law has provided for cases like hers, and is in the receipt of the highest rate of pension which the policy of the law allows; but she claims that her case is an exceptional one and should be taken from under the operation of the general rule, and the logic of her memorial is that her husband's services were of that extraordinary merit as to justify his widow in laying claim to a higher pension than of legal right belongs to widows of officers of the highest grade in the military and naval service.

She does not complain that her husband did not receive a just compensation for his rank and merits while living, and yet he received no more than other officers of equal rank. The logic which demands a distinction between widows in the matter of pensions, when their husbands were of the same rank, should, to be consistent, demand that his pay while living should be increased by the supposed excess of his merits over other officers. In other words, if Mrs. Shirk is entitled on the score of the superior merits of her husband to a superior pension, then the law, to be equal, should have distinguished him while living by giving him greater compensation than other officers of the same rank received, and, having failed to do that, Congress should make up the deficiency to his widow.

Congress has in eighteen instances, by special legislation, distinguished between widows of officers ranking as brigadier and major general.

On March 2, 1874, the Commissioner of Pensions furnished the committee a list of pensioners, widows, &c., of the grade of brigadier and major generals, then drawing pensions of \$30 and upward per month. There were fourteen cases where the pensions were \$50, while the remaining thirty-nine drew but \$30 per month, except in a few cases where there was a minor child. To those fourteen cases a few more were added by Congress at the last session. The pressure is constant, and the argument is made stronger by every exception added. These are appealed to as precedents, and Congress is asked, "Why distinguish this widow from that, and allow one \$50 while the other gets but \$30?"

While widows have been thus distinguished by special legislation, it is curious to observe that of fourteen cases of invalid-pensioners, of the grade of brigadier and major generals, now drawing pensions, there is not one whose pension exceeds \$30 per month, although General Shields was shot through the lungs, and General Fairchild lost an arm, and General Paine a leg, and although that list embraces such names as Generals Willich, Vauclève, Gresham, Curtis, and the others named above.

Mrs. Shirk, as we have shown, is in the present receipt of a pension, as widow, of \$30 per month. That sum is the extent of what her husband, if living, could have received as an invalid-pensioner, although totally disabled. She gets as much as any brigadier or major general is now getting, in the way of a pension, no matter how badly disabled. Her present pension is as high as the widow of any naval officer now on the roll is drawing, with the single exception of Mrs. Farragut; she gets all that was promised by the law when her husband entered the naval service, and when she became his wife. She gets what other

widows of military and naval officers have got and were content with, until they became apprised that discriminations are made by special legislation. She gets what the cool judgment of Congress established as a just rule of compensation, when undisturbed by solicitation, and all that Congress would to-day probably establish as a rule applicable to all. She gets all that the Government can afford to pay, in view of the fact that our pension system costs the country thirty millions of dollars annually, a sum forty years since in excess of all its annual expenses.

Besides, it is apparent that every act of special legislation, altering the general rule, invites fresh applications to Congress, and, as precedents multiply, the difficulty increases of resisting these appeals.

Congress should do one of two things: put a stop to this special legislation, which savors of favoritism, and is generally the result of personal solicitation; or increase, by general law, the pensions to widows of officers of high rank.

The committee for these reasons feel constrained to recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2680.]

The Committee on Pensions, to whom was referred the bill (H. R. 2680) granting a pension to Mrs. Jane Dulaney, submit the following report:

This case was once considered by the committee and reported upon adversely. On the 10th of December, 1874, it was recommitted upon order of the Senate. The bill directs the Secretary of the Interior to place the name of Mrs. Dulaney on the pension-roll, as the widow of William Dulaney, late colonel United States Marine Corps, and pay her a pension from and after the passage of the act.

The widow has placed before the committee the record of her husband's service in the Marine Corps, covering a period of fifty-one years.

He entered the corps as second lieutenant on June 10, 1817. He was commissioned a captain by brevet on May 18, 1830, to rank from June 19, 1829. He was promoted and commissioned a captain on 17th of October, 1834, to rank from 30th of June, 1834. On March 4, 1843, he was commissioned a major by brevet, to rank from 3d of March, 1843, for meritorious conduct. On January 9, 1848, he was promoted and commissioned a major, to rank from 17th November, 1847. On 9th March, 1849, he was commissioned a lieutenant-colonel by brevet to rank from 14th September, 1847, for gallant and meritorious conduct at the storming and capture of the Castle of Chapultepec and the capture of the Belen Gate and the city of Mexico. On April 1, 1862, he was promoted and commissioned a colonel, to rank from July 26, 1861. He was placed on the retired list 6th of June, 1864. He died on 4th July, 1868, at his residence at Beltsville, Md. His several commissions bear the signatures of Presidents Jackson, Tyler, Polk, Fillmore, and Lincoln. He was repeatedly commended, for his good conduct, and was, no doubt, a meritorious officer.

The evidence of his death being the result of injury or sickness occurring while he was in the service is wholly contained in the following certificate:

1330 NEW YORK AVENUE,
Washington, January 14, 1870.

This is to certify that I attended the late Colonel W. Dulaney in his last illness; that he died on the 4th of July, 1868, of congestion of the brain; previous history of his case arose from causes produced while in the line of his duty.

THOS. MILLER, M. D.

Even the original certificate is not produced, but a sworn copy.

Mrs. Dulaney swears that she does not possess any real or personal estate, and that she is dependent upon the aid of others for a subsistence.

Among the papers is a copy of a letter from General James Shields to the President, soliciting an appointment to some official position of D. French Dulaney, (son of Colonel Dulaney.) He thus speaks of his father: "He was in my brigade in Mexico, and there was no braver soldier or truer gentleman in that brigade."

The petition of Mrs. Dulaney to Congress for the passage of a special act giving her a pension is indorsed by a great many officers in the naval service, and by the Surgeon-General of the Army, and the Assistant Surgeon-General. The reason they assign is, that "she is in a most destitute condition."

The age of Colonel Dulaney at his death is nowhere given, but it appears that a little more than fifty-one years elapsed from the time he entered the service as second lieutenant to the period of his death. It is fair to infer that he was nearly or quite seventy years old when he died. His military record mentions but two instances of disability: "On June 21, 1841, relieved from orders dated 24th March, 1841, under surgeon's certificate." Again: "On leave from 27th to 31st August, 1832; on leave for two months from 18th September, 1832; on 14th December, 1832, his leave extended two months 'under surgeon's certificate,' which leave, it is understood, has been verbally extended again."

We have thus condensed all that is valuable in the papers before us to enable the Senate to form a correct judgment as to the merits of Mrs. Dulaney's application.

We cannot regard the certificate of Dr. Miller, given after the patient's death in the meager form it is, as of much value. He furnishes no basis for his opinion, founded on previous acquaintance or otherwise. And then it seems to the committee in a high degree improbable that a malarial fever contracted in the Florida war, should have been the cause of Colonel Dulaney's death in 1868, at the ripe age of three-score years and ten. Rejecting that theory, this case has no basis to stand on except the long and honorable service of this officer and the destitution of his family.

To allow a pension for this cause would open the door to a great many similar cases and be a most dangerous precedent.

The committee therefore recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 7, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3707.]

The Committee on Pensions, to whom was referred the bill (H. R. 3707) granting a pension to Louisa Thomas, submit the following report:

Cyrus Thomas was a private in Company E, One hundred and seventy-sixth Ohio Volunteers, and was discharged May 27, 1865, after seven months' service. On the 21st of June, 1870, he applied for a pension. During the pendency of his claim, his widow, the said Louisa Thomas, upon her husband's death, renewed the application on the 25th day of July, 1872. The Commissioner having rendered his decision in the matter adverse to the claim, she appealed from it to the Secretary of the Department of the Interior. On May 1, 1873, the Secretary affirmed the decision of the Commissioner. The following is his letter:

It appears from the papers in the case, that the soldier served only seven months in the Army, was discharged therefrom, and died more than six years thereafter of consumption, which disease, it is claimed, originated in the service. The record evidence in the case fails to substantiate the parol testimony, which is adduced to show that the soldier's death is traceable to the service. According to medical statistics, the average duration of consumption in this country is about two years and a half, and yet it appears in this case that about five years elapsed, after the soldier's discharge, before medical aid was called in. In view of these facts and considerations, I am constrained to concur with you in the opinion that the disease of which the soldier died cannot be regarded as having been incident to the service, upon the evidence submitted, and, therefore, that his widow has no just claim for a pension.

The Secretary was, no doubt, influenced in coming to his conclusion by the following opinion of the medical referee:

This claim was rejected by the medical division on the ground that the proof of origin of death-cause was not satisfactory.

1st. There is lack of record in corroboration of the declaration as made for invalid pensions.

2d. The presumption from every point of view is against it. The soldier was discharged, after about seven months' service, May 26, 1865, then suffering, as he claimed, with consumption, at least in its incipency. It is conceded in the testimony that no physician was called until 1870—five years subsequent to discharge. This (five years) is a period just about *twice the average duration* (in the United States) of the disease. It is incredible that a man situated as this soldier, in a densely populated country, with physicians on all hands, would have permitted a disease of so grave a character to have gone without any attempt at check during five years.

It is not shown that the soldier was subjected to any very extraordinary exposure, and it is highly probable that he was not subjected to the causes of consumption during the winter of his service in greater degree than often when at home. He was forty years old when he enlisted. There is this problem for solution: what are the chances

that this soldier, exposed to no very extraordinary degree during the time, contracted consumption during the *precise seven months* of his service in the Army ?

In any point of view, the claim, as presented, is unsupported by either the testimony or probability.

Failing to obtain a pension, Mrs. Thomas has applied to Congress, and it is the hard duty imposed upon the committee of looking over with weary eyes the many papers which have accumulated in this protracted effort. We have done so, and we find that it is true that Thomas was an apparently healthy man when he entered the service, and caught a very severe cold while doing picket-duty in February, 1865, and was sent to the hospital; that he was discharged from the service in seven months after entering it, but no medical evidence is furnished as to the character of his disability at this time. For five years he holds his peace, while thousands are making applications for pensions, and no sufficient cause for this long and continued silence is shown, if he was really suffering during all this time from the exposure in 1865. We say no sufficient cause; yet the soldier does give some reasons. He had taken medicine, quantities of it, before leaving the service, without benefit; he lived in the country, remote from physicians, and his faith in the efficacy of medicines was weakened.

When he submitted to a medical examination on the 21st of February, 1871, the surgeon found his disability permanent, from disease of the lungs, and this report was repeated by the same surgeon on the 27th of September following.

It is proper also to say that certain privates of the same company trace his case down from the time he was in hospital, through all the intervening years until his application was filed, and say he was never well; that he became more and more reduced in flesh, complained of pain in his breast and lungs, had a violent cough, and was so weakened as to be unable to perform labor, while his habits both in the Army and since were good.

Also, certain neighbors testify that he came home broken down in health, being unable for a whole year after his return to perform any labor, except certain light kinds of work; that much of the time he was confined to his house. All the witnesses agree he was sound when he entered the service.

The captain of the company speaks of the severe cold he took; that it settled on his lungs, producing a violent cough, also swelling of his legs and feet; that he ordered him to the hospital only after it was manifest he was unfit for service. He indorses his faithfulness and excellence as a soldier.

As the records failed to show what he was treated for in the hospital, the evidence of the army-surgeon was all-important, but Thomas swore that it was impossible to learn his whereabouts. Perhaps this difficulty would not have existed had he moved earlier in the matter.

It is certain that he died of pulmonary consumption. When and how did it originate? We have the opinion of the medical referee backed by that of the Secretary that the course of that disease is run in a less period than five years. Yet if the captain and privates of his company and his near neighbors are to be believed he brought home with him the symptoms that developed into consumption. Here were pain in the chest, a violent cough, weakness and debility from the start never disappearing, disabling him from anything but light labor, sometimes confining him to his house; and these culminated at last in death. Toward the last, one lung had entirely disappeared and that side of the chest was much flattened. What shall we say of these facts when put in opposition to the theory? If the witnesses are to be believed—and we see no rea-

son to discredit them—the soldier was disabled when he left the service and disabled every day afterward until death came to his relief. And this disability did not exist when he enlisted. The committee cannot explain away these facts and are constrained to believe that a connection is established between the severe cold as a cause and the death as the result. If they could find any interregnum of the disease, so to speak—any time when the original cold ceased to produce specific effects, they would be glad to adopt the theory of the medical division, but they cannot, and have concluded, with great hesitation, to recommend the passage of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. PRAÏT submitted the following

REPORT:

[To accompany bill H. R. 366.]

The Committee on Pensions, to whom was referred the bill (H. R. 366) granting a pension to Hugh Wallace, submit the following report:

It is claimed that Wallace was a private in Company F, Forty-sixth Regiment Missouri Infantry Volunteers, and that he was disabled while in the service and in the line of duty. His claim was rejected at the Pension Office, and no additional proofs have been furnished not before the Commissioner. It was re-examined, but the same conclusion reached. Neither the State nor United States records bear his name as a soldier in that regiment, nor does he produce any discharge. However, the Surgeon-General certifies that Private Hugh Wallace, Company F, Forty-sixth Missouri Volunteers, was admitted to general hospital, Springfield, Mo., May 27th, 1865, for treatment for pneumonia and chronic diarrhoea, and that he was returned to duty June 28, 1865, and, further, that there were no hospital records of Cassville on file in his office. The pertinency of this latter proof will hereafter appear. In a subsequent certificate the Surgeon-General certifies that Wallace was treated for dysentery at post hospital at Cassville, as appears from a prescription-book, which gives neither date of admission nor exit. No register of this hospital was on file. The Adjutant-General twice certifies that the soldier's name does not appear on the rolls of the company.

The Paymaster-General certifies that there is no record of any payment to this soldier on the books of his office.

On the contrary, the soldier swears that he enlisted on the 25th of August, 1864, in this company and regiment, (David C. Ruff being captain,) and that he was discharged in July, 1865; that on the 3d of March, 1865, he was ordered to proceed from Springfield, Mo., to Cassville, in that State, with a squad of enlisted men of the regiment, and while marching on foot next day he was exposed to rain all day, and, being heated by walking, was immediately, upon reaching his company at Cassville, taken sick with the typhoid fever, and after eight weeks' confinement, was pronounced out of danger, with the loss of the use of his left arm and side, and impaired use of left leg; the arm and side being paralyzed, the leg partially so. Two witnesses swear to seeing the soldier start on the march to Cassville and saw him when he returned to Springfield in his disabled condition as above described, and that he was well and sound when he started on the march.

The captain of the company, David C. Ruff, makes oath substantially

to the same facts, and, in addition, that Wallace was a private in the company, and that he contracted his disability while in the service and in the line of duty.

A major of the Fifteenth Missouri Cavalry certifies that Wallace was at one time in his command, and was then a sound, healthy man, and that he lost his health while serving in the Forty-sixth Regiment, and was in hospital when the war closed.

Two privates in the same cavalry regiment certify to their acquaintance with Wallace; that he was a private in Company F, and that he was permanently disabled while in the service and has continued so since. These certificates are not sworn to.

Again: S. H. Boyd, who describes himself as late colonel of the Twenty-fourth Missouri Infantry, certifies, also without oath, that this Wallace was a faithful and gallant soldier in that regiment; that he knows he was a private in the Forty-sixth Missouri Infantry, and that he is now, and has been ever since he came out of the service, permanently disabled and unable to do anything, and that he procured his admission into the Soldiers' Home at Dayton, Ohio, where he remained awhile.

In a supplementary statement, under oath, made by Wallace on July 7, 1871, he states that he was duly enlisted at Springfield, Mo., on 25th of September, 1864, and was afterward mustered into the service in said Company F, at the same place, by Captain John Howard, assistant commissary of musters, on a detachment muster-roll, he (Wallace) being then absent from the company on account of sickness, and that the company marched from that place before he was mustered in, and that he was detained at Springfield by order of the commander at that place; that he was afterward ordered to join his company, which was then at Cassville, and on the march, with a small squad of soldiers, was exposed to a day's rain as above stated. Wallace admits he has no discharge, but says it arises from the fact that the mustering-officer who mustered him out (Captain John Howard) sent all his papers to Saint Louis, and he has been unable to obtain them. He does not say that Howard is dead, or his residence unknown, or what efforts he has made to obtain evidence of his discharge.

From the certificates of the officers above given it would appear that Wallace was, during the period of the war, a member of one cavalry and two infantry regiments, though he makes no allusion to that fact in his declaration for a pension.

The certificates of the examining surgeons are satisfactory as to his disability.

Amidst this conflict of the evidence the Pension-Office was probably justified in rejecting the claim. But it is clear he was in two Government hospitals and treated there. This could not have been the case had he not been in the Army, or some way attached to it. Besides it is scarcely possible that the officers named could have been mistaken in the fact of his enlistment. We think his disability is fairly traceable to his exposure on the march to Cassville. We therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill S. 749.]

The Committee on Pensions, to whom was referred the bill (S. 749) to repeal a part of the act therein named, in relation to the compensation of pension-agents, having had the same under consideration, report:

That the following is a tabular statement showing the amount received by such agents for the fiscal year 1873-'4, arising from the 2 per cent. under the joint resolution of July 17, 1862, (vol. 12, page 629,) and the additional compensation by act of June 30, 1864, (vol. 13, page 325,) together with the amount of fees at 30 cents received on vouchers prepared and paid by act of July 8, 1870, (vol. 16, page 193):

Statement of the amount of compensation, under acts of July 17, 1862, and June 30, 1864, and also amount of fees on vouchers prepared and paid under act July 8, 1870, at each agency, in the fiscal year ending June 30, 1874.

Agencies.	Compensation.	Fees on vouchers.	Total.	Agencies.	Compensation.	Fees on vouchers.	Total.
Little Rock.....	\$2,750 00	\$747 90	\$3,497 90	Concord.....	\$4,000 00	\$4,096 80	\$8,096 80
Hartford.....	4,000 00	4,121 40	8,121 40	Albany.....	4,000 00	13,357 80	17,357 80
San Francisco.....	1,898 92	473 70	2,372 62	Canandaigua.....	4,000 00	12,934 80	16,934 80
Washington.....	4,000 00	5,788 20	9,788 20	New York.....	4,000 00	9,681 90	13,681 90
Wilmington.....	2,028 77	611 70	2,640 47	Brooklyn.....	4,000 00	3,498 90	7,498 90
Indianapolis.....	4,000 00	11,572 20	15,572 20	Trenton.....	4,000 00	5,463 30	9,463 30
Madison.....	4,000 00	3,682 80	7,682 80	Raleigh.....	2,750 00	811 80	3,561 80
Fort Wayne.....	4,000 00	3,756 00	7,756 00	Omaha.....	1,593 43	439 20	2,032 63
Chicago.....	4,000 00	6,855 30	10,855 30	Santa Fé.....	125 94	46 50	172 44
Springfield.....	4,000 00	4,896 30	8,896 30	Columbus.....	4,000 00	7,679 70	11,679 70
Salem.....	4,000 00	6,538 20	10,538 20	Cincinnati.....	4,000 00	11,047 80	15,047 80
Quincy.....	4,000 00	3,436 50	7,436 50	Cleveland.....	4,000 00	6,793 50	10,793 50
Dubuque.....	4,000 00	3,037 50	7,037 50	Oregon City.....	279 41	106 80	386 21
Fairfield.....	4,000 00	3,011 40	7,011 40	Pittsburgh.....	4,000 00	7,694 10	11,664 10
Des Moines.....	3,374 00	2,426 10	5,800 10	Philadelphia, Invalid.....	4,000 00	12,348 60	16,348 60
Louisville.....	4,000 00	4,357 50	8,357 50	Philadelphia, Widow.....	4,000 00	10,762 80	14,762 80
Lexington.....	3,750 00	2,614 50	6,364 50	Providence.....	3,000 00	1,433 10	4,433 10
Topeka.....	3,750 00	2,331 30	6,081 30	Nashville.....	3,500 00	2,022 90	5,522 90
New Orleans.....	2,750 00	772 80	3,522 80	Knoxville.....	4,000 00	3,311 40	7,311 40
Augusta.....	4,000 00	3,786 90	7,786 90	Montpelier.....	3,500 00	2,846 40	6,346 40
Portland.....	4,000 00	4,360 80	8,360 80	Burlington.....	3,250 00	2,370 00	5,620 00
Bangor.....	4,000 00	3,567 90	7,567 90	Richmond.....	3,250 00	2,097 60	5,347 60
Boston.....	4,000 00	12,313 20	16,313 20	Wheeling.....	4,000 00	4,504 40	8,504 40
Fitchburgh*.....	1,793 02	1,546 80	3,339 82	Madison.....	3,750 00	2,946 10	6,596 10
Baltimore.....	4,000 00	3,331 50	7,331 50	Milwaukee.....	4,000 00	3,855 90	7,855 90
Vicksburg.....	1,557 55	490 00	1,977 55	La Crosse.....	3,000 00	1,358 40	4,358 40
Saint Louis.....	4,000 00	4,896 60	8,896 60	Vancouver.....	105 98	31 80	137 78
Macon.....	4,000 00	3,023 10	7,023 10				
Detroit.....	4,800 50	9,163 50	13,964 00				
Grand Rapids.....	3,250 00	2,908 60	6,158 60				
Saint Paul.....	3,750 00	2,307 00	6,057 00				
Portsmouth.....	2,750 00	1,227 90	3,977 90				
					301,507 02	256,625 40	458,132 42

* Fitchburgh agency commenced business March 1, 1874, and the compensation above given is from that date to June 30, 1874.

The number of vouchers paid during the fiscal year 1873-'4, is 22,083 less than the previous one, and it is expected that there will be more or less diminution of the present roll in each succeeding year.

The last proviso of the act of June 20, 1874, (pamphlet edition, pages 115-16,) making appropriation for paying pensions during the fiscal year of 1874-'5, reduces the fee on vouchers to 25 cents each.

From the gross compensation, must be deducted the sums paid for postage, rent of office, furniture, clerk-hire, fuel, lights, &c., the expenses of which cannot be furnished, as no accounts of them are rendered to the Pension-Office. That these contingent expenses exceed, and in some case largely, the entire amount allowed by resolution of July 17, 1862, and act of June 30, 1864, there is no doubt; consequently, if the 4th section is repealed, other provisions should be made for compensating the agent for the duties by other sections of the same act, as well as for rent, clerk-hire, and other office expenses.

The number of pensioners on the rolls of the several agencies is unequal, and the amount of labor required to discharge the duties varies so much, that it is probable no better system could be adopted for compensating the same, than prescribing a fee on the vouchers that are paid. Besides the advantages which the Government and the pensioners derive from it, the large responsibility of the agent stimulates him to industry, care, and promptness in the performance of his official duties.

To abolish the fees without making other provision of equal compensation, would destroy the present system of paying pensions.

The committee, therefore, recommend that the bill be indefinitely postponed.



IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 1943.]

The Committee on Pensions, to whom was referred the bill (H. R. 1943) granting a pension to Helen M. Stansbury, respectfully report :

Helen M. Stansbury, as the widow of Howard Stansbury, some time a major in the corps of topographical engineers, who died at Madison, Wis., April 17, 1863, is already drawing a pension of twenty dollars a month; and as the evidence shows that said Howard Stansbury was on the retired list at the time of his death, and as the weight of the evidence shows that he died of disease contracted in the year 1859, while he held the rank of captain, under the act of March 3, 1873, the widow is not entitled to a pension of a higher rate than twenty dollars a month. The committee, therefore, recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 2677.]

The Committee on Pensions, to whom was referred the bill (H. R. 2677) increasing the pension of Mary G. Harris, submit the following report:

It appears from the papers in the case that Mrs. Mary G. Harris is now in the receipt of a pension at the rate of \$30 per month, as the widow of John Harris, late colonel commandant of the marine corps, who died May 12, 1864. The immediate cause of the death of Colonel Harris was a "congestive chill," and it is sought by the evidence to show that his death was the result of disease contracted prior to the inception of the late rebellion, viz, in February, 1857.

Mrs. Harris claims, under acts passed prior to July 14, 1862, a pension at the rate of \$50 per month, inasmuch as her husband contracted pneumonia in 1857, and, as is alleged, never completely recovered his health. The question for decision is, therefore, does Mrs. Harris's right to a pension enure by force of the act of July 14, 1862, or of what are termed the old pension laws, i. e., those passed prior to that date.

This question arose shortly after the passage of the act of July 14, 1862, and in reply to a request by the then Commissioner of Pensions, for a construction of the 1st section of that act, Mr. Secretary Smith, under date of September 10, 1862, used the following language, viz:

To entitle a person to a pension under the 1st section, it must appear that his disability was created since the 4th of March, 1861.

If the disability was created prior to that date, he must apply under the previous pension laws. The question is not to be determined by the date of the wound or disease from which the disability originated, but from the date of the disability caused by such wound or disease. If the disability originated from disease which existed prior to that date, (March 4, 1861,) but the disease was not fully developed, or did not cause disability until after the date named, the claimant is entitled to a pension under the late law, (i. e., the act of July 14, 1862.)

This interpretation of the law has continued undisturbed to the present day, and is believed to be correct.

If Colonel Harris had been disabled and discharged from the service, or placed on the retired list before March 4, 1861, he would have been entitled to a pension under the old laws, and, dying, his widow would have succeeded thereto; but the fact of Colonel Harris's remaining at his post for seven years after the contraction of pneumonia in 1857, shows that, even though he may have contracted the disease in 1857, he was not disabled prior to March 4, 1861, and therefore his widow's claim for pension was properly adjudicated under the act of July 14, 1862, which grants pension on account of disability, which first existed as a disability at a date subsequent to March 4, 1861. And as the highest pension allowed for the highest rank in the Navy has already been awarded the act of July 14, 1862, your committee ask to be discharged, and recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3031.]

The Committee on Pensions, to whom was referred the bill (H. R. 3031) granting a pension to Catharine A. Winslow, widow of the late Rear-Admiral John A. Winslow, submit the following report:

Catharine A. Winslow, the widow of the late Rear-Admiral Winslow, was, on the 30th of September, 1873, granted a pension of \$30 per month. Said pensioner now petitions Congress that her pension be increased to \$50 per month.

The pensioner states in her application for pension that her husband, said Winslow, then a rear-admiral, United States Navy, took command of the Pacific station in August, 1870, and in January, 1872, was attacked with partial paralysis while at sea, the result of long and repeated exposure while in service in the United States Navy; that he was surveyed by a board of medical officers in June, 1872, and by their advice resigned his command; that he never recovered his health, but failed gradually, with repeated attacks, the result of the same disease, till the time of his death at Boston, Mass., September 29, 1873.

Bureau of Navigation, Navy Department, reports: John A. Winslow appointed a midshipman February 1, 1827; promoted to a lieutenant December 9, 1837; to a commander September 14, 1855; to a commodore June 19, 1864; and to a rear-admiral March 2, 1870. Died at Boston, Mass., September 29, 1873.

Surgeon John M. Browne, medical inspector, United States Navy, certifies that "in June, 1872, at Panama, on board the United States flagship California Rear-Admiral John A. Winslow, then commanding the Pacific station, was surveyed by a medical board, of which I was the senior member.

"The board found Admiral Winslow affected with a disorganization of the right eye, severe neuralgia of right side of face, and general debility succeeding an attack of partial paralysis of right side. The board were of opinion that the diseased condition of the eye and neuralgia originated at the time of the Mexican war, and in the line of duty, aggravated by exposure from time to time until 1862, when, in the performance of duty on the Mississippi River, the sight of the eye was destroyed.

"In January, 1872, while at sea, partial paralysis occurred in the line of duty, from former long-continued exposures. Having served with Admiral Winslow on board the Kearsarge and California, during which period he was almost constantly under my treatment, and having re-

ceived from him a full and convincing statement as to the causes which created illness, I am of the opinion that his death resulted from diseases that originated in the line of duty."

B. E. Cotting, M. D., swears "that John A. Winslow died September 29, 1873, in a convulsion similar to two previous attacks, one occurring May 9, 1873, in Washington, D. C., and the other July 5, 1873, in Boston, which I consider the result of the same disease for which he was relieved from duty by the medical board off Panama, June, 1872, when he was in command of the Pacific station. I had known Admiral Winslow for many years; was from time to time his physician when at home; I knew generally of his ailments; saw him just previous to his taking command of the Kearsarge in October, 1862, and attended him in his final illness from July 5, 1873, to his death. I further certify, without reserve, that, in my opinion, all the several ailments, injuries, diseases, so far as I knew them, originated from exposure and other service in the line of duty as an officer in the Navy, and his death must be assigned to the same causes."

The committee fully recognize the great services of Admiral Winslow, and entertain no doubt that his death resulted from diseases contracted in the line of duty, but they refer to the report upon H. R. 3427, Forty-third Congress, first session, as fully embodying the views of the committee in such cases, and recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3700.]

The Committee on Pensions, to whom was referred the bill (H. R. 3700) granting a pension to Teter Wolfyoung, submit the following report:

Teter Wolfgong, whose surname is misspelled in the bill, was a private in Company E, of the second battalion, Eighteenth Regiment United States Infantry, and was enlisted on the 21st day of February, 1862, to serve three years, and was discharged on April 29th, 1865, at Louisville.

In his discharge his character is set down as excellent. In his affidavit, made on March 13, 1874, he states that he applied for a pension on account of disability contracted in the service of the United States, when he was informed that he was marked as a deserter from the 16th of September to the 23d of November, 1862; that he had, by his attorney, furnished the Adjutant-General with positive evidence, proceeding from persons who were with him in the regiment, that he was never absent from his regiment without leave, but the Adjutant-General refused to receive any evidence upon that point except from commissioned officers; that in the fall of 1862, at the time of the alleged desertion, he was left, with some others, at Iuka, Miss., to take care of the sick, and to come to the regiment and bring the sick with him when ordered; that they subsequently received orders to join the regiment, and started with the sick to do so, and when they reached Huntsville the bridge was burned, and they were detained there some three or four weeks before they joined their regiment, and he supposes that during this time he was marked as a deserter; but he asserts that while in the Army he never had any knowledge or intimation that he was either marked deserter or absent without leave.

In this statement he is strongly supported by John Wolfgong, of the same company and regiment, who says:

"When we were ordered to leave Iuka, I was on the sick-list, (having the mumps.) The regiment started on foot, except the sick, who were put on the cars and started by rail. Teter Wolfgong was one of the guards sent with the sick. When we came to Huntsville, Ala., the bridge was burned, and we had to remain—I cannot say how long, but came to the regiment before they got to Perrysville, Ky., and from thence went on to Stone River, where a fight took place on the 31st of December, 1862, and on the 1st and 2d days of January, 1863. To my knowledge, Teter Wolfgong participated in both these fights, (Perrysville, Ky., and Stone River.) I cannot recollect the exact date of

our arrival and removal from places after we left Columbus, Ohio, until date of the battle of Stone River, which was as above stated. I do know that during this time Teter Wolfgong neither deserted nor was he absent without leave. I was with him all the time, and the only way I could account for the charge of desertion, from September 16, 1862, to November 23, 1862, would be that, perhaps, when we were detained at Huntsville, as above stated, he might have been marked so. But in case he was a deserter, all the rest of us who were with him would be the same, and we never had any knowledge of such charge, and so believe the entry against Teter Wolfgong is an error."

The following is the soldier's record in the Adjutant-General's office:

On the muster-roll of Company F, of that regiment, for the months of September and October, 1862, he is reported "private, deserted September 16, 1862." Roll November and December, 1862, reports him joined from desertion, November 23, 1862. January and February, 1863, "transferred to Company E, 2d battalion, said regiment." Muster-roll of Company E, 2d battalion, Eighteenth Infantry, for January and February, 1863, reports him "present, sick." On roll for November and December, 1864, "absent, sick, at Jeffersonville, Ind., since August 27, 1864." On roll for January and February, 1865, "discharged at Jeffersonville, Ind., February 24, 1865, expiration of enlistment." A probable charge of desertion not removed.

In his declaration for a pension, Wolfgong says that in the fall of 1864 he had rheumatism and chronic diarrhea, went to the hospital at Chattanooga, got better, and was sent to Jeffersonville, and got so that he could walk around, and was then put on duty at the hospital for about a month; that he then took what the doctor called army-fever, and lay until about the middle of March, 1865, and was scarcely able to go home when discharged; that his right arm and both legs were much affected; that his shoulder was cut open three times at the hospital, and that since his discharge he has not been able to do a day's work.

The Surgeon-General certifies that Wolfgong was admitted to the general field hospital, Chattanooga, August 29, 1864, from field hospital, Marietta, Ga., for treatment for chronic diarrhea, and transferred September 22, 1864; entered No. 1 general hospital, Nashville, September 23, 1864, with contusion of back, received at Atlanta, August 6, 1864, and was transferred October 25, 1864; entered hospital at Jeffersonville, October 25, 1864; convalescent and returned to duty April 11, 1865; remarks upon record, "sent to Col. Dill, Louisville, Ky., to be mustered out."

Dr. R. B. Brown testifies that, from the time he became acquainted with the soldier up to the time he went into the army, he was of sound bodily health; that when he was discharged from the service and came home he attended on him in the capacity of a physician, and that his disease was rheumatism.

Dr. R. S. Hunt, an examining-surgeon, certifies on the 4th of March, 1871, that Wolfgong contracted chronic diarrhea, with rheumatism, while he was in the service; that he was still suffering from both—especially rheumatism of right shoulder; that it was impossible at times to raise his right arm at all; that several large abscesses had formed on the right shoulder; that the muscles of the right arm were atrophied; the bowels moved two or three times a day from chronic diarrhea, and the whole system emaciated and debilitated from the combined effects of rheumatism and chronic diarrhea. He pronounced his disability not permanent, but totally incapacitating the soldier from labor.

Four witnesses, two of whom were of his company, one a corporal, the other a private, and the remaining two acquaintances of fifteen years' standing, testify that Wolfong was a sound and healthy man, able to do all kinds of work before entering the service, and that when he came home from the army, in the spring of 1865, he was in bad health, occasionally able to do light work, but for a great portion of the time unable to do anything, his right shoulder meanwhile being very much affected; and they all agree that his complaints were contracted while he was in the service.

The corporal testifies that in August, 1864, the soldier was taken down with the rheumatism and chronic diarrhea, near Atlanta, and from that time forth was unable to do duty.

McClane, the private above referred to, testifies to the same facts, and, in addition, says, that after his discharge he went to Jeffersonville to take Wolfong home with him, but found him unable to be moved; that he staid with him until about the last of March, during which time the soldier was unable to help himself in any way, and he did not think he would get well.

This is the substance of the proof in the case. We do not think the charge of desertion, in the light of the explanation given, should stand in the way of Wolfong's pension-claim. For more than two years after the alleged desertion he served in the Army without any notice of the charge. If it was ever true, it is remarkable that he should not have been brought to trial upon it.

From the abstract of the evidence furnished by the Adjutant-General, we are satisfied the charge should be removed.

It is incredible that he should have been paid and received his bounty if this charge were true.

The committee, therefore, recommend the passage of the bill, with an amendment substituting Wolfong for Wolfyoung, his true name being Teter Wolfong.



IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill H. R. 1183.]

The Committee on Pensions, to whom was referred the bill (H. R. 1183) granting a pension to Mrs. Martha K. Robinson, of Portsmouth, Ohio, submit the following report :

Mrs. Robinson is the widow of Maj. Joshua Van Zandt Robinson, Thirty-third Ohio Volunteers, who died of pulmonary consumption, at Portsmouth, in that State, on March 23, 1862. She filed her application for a pension on the 27th day of October, 1862, which was rejected by the Commissioner of Pensions, January 27, 1869, on the ground that medical evidence on file showed that the disease which caused the soldier's death existed prior to his entering the service. She applied to Congress for a special act February 14, 1872, and this application was renewed January 12, 1874.

We have examined the testimony filed with the Commissioner (nothing new having been furnished) and concur in his conclusion. Dr. Mussey, who was surgeon of the regiment, states explicitly that Major Robinson died of pulmonary consumption, with which disease he was affected for several years before he entered the service. At the same time he expresses the opinion that his death was hastened materially by the hardships endured by him in the line of duty while his regiment was employed in its campaigns through the mountains of Eastern Kentucky, in the fall and winter of 1861. It would be against the whole scope of the pension-law to grant a pension under these circumstances. For years before he entered the service this soldier had been affected with this disease, which is regarded as incurable. Sooner or later, it was sure to end his days. It was not a disability, therefore, incurred in the service, but an existing one when he entered it. Now, it is the very essence of the law that the seeds of death should be planted while the soldier is in the service, to entitle his widow to a pension.

This we cannot find to be true, and therefore recommend that the bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 870.]

The Committee on Pensions, to whom was referred the bill (H. R. 870) granting Mrs. Mary E. Murphey, of New York, as the widow of Richard I. Murphey, a pension, at the rate of \$15 per month, commencing on the 19th day of November, 1871, submit the following report :

■ This case was before the committee at the last session of Congress, and an adverse report thereon was made by Mr. Hamilton, the subcommittee by whom it was examined. (See report No. 332.) The bill was recommitted by order of the Senate at the present session, but no new evidence has been submitted.

Mrs. Murphey is now in the receipt of a pension at the rate of \$8 per month, with \$2 additional for each child, beginning on the 19th of November, 1871, the date of her husband's death.

The increase is demanded on the ground that Mr. Murphey was a first lieutenant at the time he suffered the disability causing his death. The Pension-Office, however, decided that the disease was contracted before he became a commissioned officer, and this decision was affirmed by the Secretary of the Interior. The committee having once examined the evidence upon which that decision was predicated, and having concurred in its correctness, and no new evidence having been produced, have not thought it worth while to re-examine all the papers in the case, which are very voluminous. The amount of business before the committee will not justify such repetition of labor.

The committee, therefore, recommend, as before, the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 8, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT :

[To accompany bill S. 836.]

The Committee on Pensions, to whom was referred the bill (S. 836) granting a pension to William Ira Mayfield, having had the same under consideration, respectfully report :

That the evidence in this case shows that William Ira Mayfield, on the 31st day of October, 1855, in a fight with the Rogue River Indians, as a private of Company A, Capt. J. Smiley Harris, of the Ninth Regiment, Col. John E. Ross, Oregon Mounted Volunteers, was severely wounded by a rifle-ball which entered the joint of the right knee, passing through the joint and fracturing the bone to the under side of the leg, in consequence of which he lay in hospital at Jacksonville, Oregon, for months; that said wound prevents him from obtaining a living by manual labor; that he entered the service at Jacksonville, Oregon, October 10, 1855, and was honorably discharged November 21, 1855; that some time in the year 1870 he made application to the Commissioner of Pensions for a pension, and that the same was disallowed for the reason that there was no law under which a pension could be granted him.

A law was passed March 2, 1861, making appropriations for the payment of certain troops serving against the Indians in Oregon, including the regiment in which said Mayfield served, but it did not authorize the allowance of pensions or land-warrants.

Said Mayfield asks that he may be granted a pension and placed upon the same footing with the commands of Capt. Jesse Walker and Nathan Olney, of the Oregon volunteers of 1854.

The Third Auditor of the Treasury Department, who has the custody of the muster-rolls of the Oregon troops during the Indian war of 1855 and 1856, reports that said W. I. Mayfield is borne upon the muster-rolls of Captain Harris's company, Ninth Regiment, Oregon Mounted Volunteers, as a private, and that a remark upon the rolls shows said soldier to have been severely wounded October 31, 1855, and that Captain Harris's company was mustered into service October 10, 1855, and disbanded November 21, 1855, and that Mayfield was paid for his service in said company.

The Acting Commissioner of Pensions reports that there is no law under which a pension can be allowed said Mayfield; but as the wound referred to on the rolls of the company on file at the office of the Third Auditor of the Treasury was received in the line of duty while in the service of the United States, the case is entitled to favorable consideration, and the committee recommend the passage of the bill with an amendment striking out all after the word "roll" in the fifth line, and inserting "subject to the provisions and limitations of the pension laws, to take effect from the passage of this act."

IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Horace Clough, late a private of Company D, Sixth Regiment New Hampshire Volunteers, have considered the same, and make the following report:

Petitioner entered the service on the 15th October, 1861, and was discharged on surgeon's certificate of disability, at convalescent camp, Virginia, on the 13th November, 1862. He alleges "chronic diarrhea," contracted while in the service, and the line of duty, on or about the 15th of August, 1862, at a place called Bratton's Station, Va., as the cause of his disability and discharge.

The case has been twice before the Commissioner of Pensions, and is now the second time before Congress. The first application was filed as early as April, 1863, and was rejected on the 4th October, 1866, and afterward re-opened. The difficulty was in reconciling the statements of petitioner with the record-evidence in the case.

The certificate of disability for discharge states the cause of disability to be "incipient phthisis," while the surgeon before whom petitioner was sent for examination, Dr. J. Rowlet Smith, certifies that petitioner was, at that date, (November 29, 1865,) totally incapacitated for obtaining his subsistence by manual labor, on account of "a shell-wound in the shoulder," which, from the condition of petitioner, and the evidence before him, he believed to have been received while in the service in the line of duty. The surgeon gave the following particular description of the condition of petitioner:

Clough was hit by a piece of shell in the right shoulder, on the scapula, injuring the muscles, and causing lameness of the shoulder-joint; also, the left ankle is badly swollen. On the least exertion it becomes quite lame.

These several statements, it must be confessed, require explanation, which petitioner sought to do by filing the certificate of the captain of his company, Samuel D. Quarles, under date of January 13, 1864, and the surgeon of the regiment to which petitioner belonged, Dr. Sherman Cooper; and that of his family physician, Dr. Jeremiah W. Dearborn. The two latter are sworn to. Captain Quarles states that petitioner was sent to hospital about the 27th August, 1862, on account of chronic diarrhea, which was contracted while in the service, and line of duty; that he never afterward returned to the company, but notice was received of his discharge from the United States service, on the 13th No-

vember, 1862, on surgeon's certificate of disability. The certificate is not sworn to.

Dr. Cooper testifies that he was surgeon of the regiment in which petitioner was a private, whom he knew, and who was attacked, while in the line of duty, with diarrhea, which assumed a chronic form, in the month of August, 1862, rendering him unfit for duty as a soldier; on account of which he was sent to hospital, and from there discharged the service. He adds that petitioner was a good soldier while with his regiment.

Dr. Dearborn testifies that he has been a practicing physician in Effingham, N. H., since July, 1859, and has known petitioner since that date; was his family-physician up to the time of his enlistment into the Army, who, up to that time, was a person "of sound bodily health, energetic, capable of severe fatigue, and great hardship." "Since his return from the Army," continues the doctor, "I have frequently treated him for chronic diarrhea, contracted while in the service of the United States; that I have examined him this day, June 9, 1874, and find him afflicted with the same; his condition generally broken down, and he has partial amaurosis."

This testimony is valuable so far as it goes, but it does not destroy or even impair the evidence furnished by the hospital records touching the cause of the disability on account of which the soldier was discharged; nor does it seek to explain, nor in any way allude to, the discrepancy in the statements of petitioner and his physician on the one hand, and the certificate of the examining surgeon in his report of the case to the Pension Bureau. Petitioner complains of that report as erroneous and unauthorized, but no evidence is found among the papers showing that any effort has been made to correct it. Undoubtedly this could be done if it was unauthorized by the facts in the case; or if it occurred by the accidental incorporation into the certificate the description of some other applicant, which may have happened, though the soldier is identified by company and regiment. It seems hardly probable that the examining-surgeon could have so minutely described the condition of the shoulder and ankle, without having his attention drawn to them by petitioner himself; and what should be said of a surgeon who wantonly refused to examine or report upon the chief, nay, the only, cause of disability complained of in the application?

The committee cannot reconcile these statements; and there appears to have been very little effort on the part of petitioner to procure testimony to change or disprove the record evidence. The committee, therefore, ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3687.]

The Committee on Pensions, to whom was referred the bill (H. R. 3687) granting a pension to Victoria L. Brewster, have had the same under consideration, and submit the following report :

Claimant states that she is the daughter of the late General G. Henry Nixon, who served in the war of 1812-'15, and was wounded therein, and lost a large amount of property by Indian depredations and the raids of the British in 1814, while preparing for the attack on New Orleans, for which neither he nor his heirs ever made any demand. That she is the grand-daughter of Sackville Bracy, of South Carolina, a soldier of the Revolution, wounded in battle, but who never claimed a pension. That she married Capt. John P. Sherwood, who commanded the United States steamer General Hamer, in the war with Mexico, who died from a complaint contracted in the service on the steamer, at the mouth of the Rio Grande, October 23, 1847, leaving his wife and three children in destitute circumstances, and she has received neither pension nor bounty. That she subsequently intermarried with B. S. Brewster, who, during the late civil war, was engineer on the United States steamer Laurel Hill, and was ordered home in consequence of disease contracted in the service, and died in a few days after his return. That Henry Sherwood, her son by the first marriage, was in the service, on the same boat with his step-father, and was finally ordered home on account of hemorrhage, the result of exposure in the service, and has been ever since a confirmed invalid.

Claimant made application for pension, at the proper office, filing such papers as she could procure in support of her claim, based upon the services of both her husbands, and at the same time asked, in behalf of her invalid son, the pension to which she deems him entitled, on account of the services and death of his father. The application had not been rejected when the papers in the case were called for, and the bill for her relief introduced and passed by the House of Representatives. The Commissioner was waiting for further proof in the case, touching the character of service in which Captain Sherwood and Engineer Brewster were respectively engaged while in the pay of the Government, whether, in fact, in the naval service of the United States, as alleged, or only serving on transports chartered or hired for a longer or shorter time by the Quartermaster's Department of the Army.

The papers filed in the Pension Office are before the committee, and the evidence found among them touching the service of Captain Sherwood and Engineer Brewster leads the committee to conclude that neither of them was connected with the Navy of the United States, but

were simply officers of the steamers on which they respectively served, and which were employed by the Quartermaster's Department of the Army as transports. The officers appear to have been bound to no particular term of duty, nor does it appear, even, that either the General Hamer or the Laurel Hill was chartered for any particular period.

Col. S. B. Holabird, chief quartermaster Department of the Gulf, under date of 24th September, 1863, ordered the Laurel Hill repaired, and instructed those in charge of the Government shops to repair her boiler and machinery as directed by Mr. Brewster, chief engineer of the boat. The steamer appears to have been a Red River boat, and had probably been in the service of the Confederate States. At any rate, the oath administered to Mr. Brewster was one of allegiance and fidelity only, and the tenor of it indicates that he was not only not an officer of the Navy, or of any branch of the Government, but that he had but recently given in his adhesion and support thereto. The language of the oath is that he will "*hereafter* faithfully support, protect, defend," &c.

Commodore Daniel Ammen, Chief of the Bureau of Navigation, writes to the honorable Commissioner of Pensions, under date of September 10, 1873, that there does not appear to have been a chief engineer in the Navy named Bowen S. Brewster; that he was probably connected with the marine-brigade of the Mississippi River, under Brigadier-General Ellet. The same officer, under date of 10th November, 1873, states that there is no record of a vessel in the Navy named the Brown; that the William A. Brown was transferred to the Mississippi squadron September 3, 1862, at Cairo, Ill., by Assistant Quartermaster G. D. Wise, United States Army. "Bowen S. Brewster does not appear to have been an engineer in the Navy."

Third Auditor Rutherford writes the honorable Commissioner of Pensions, December 9, 1873, that Col. S. B. Holabird, chief quartermaster, paid B. S. Brewster for services as first engineer on board the steam-transport Laurel Hill, from September to December, 1863, inclusive, and that Capt. Jacob Mahler paid him from January to April, 1864, inclusive, for services in the same capacity on board the same vessel. Does not know who paid the transport Laurel Hill, subsequent to April, 1864, and therefore cannot trace B. S. Brewster after that date.

Commodore Ammen writes on the 20th of February, 1874, to the Commissioner of Pensions, that John P. Sherwood was not in the Navy, and it is supposed that the Quartermaster's Department could furnish the information desired in regard to his services.

Finally the honorable Commissioner, in sending down the papers in the case to the honorable Committee on Invalid Pensions of the House of Representatives, states that the claim has not been rejected, but there is no evidence that the claimant's husband was in the naval service of the United States. It appears that he was simply an employé of the Quartermaster's Department when the disease which caused his death was contracted. The committee are of the same opinion, and however meritorious the conduct of claimant's husbands and son may have been, their services were of such a nature as to class them with those in civil office or employment. Being better paid and less exposed to the hazards of war, they are not regarded as having the same claims upon the bounty of the Government as those engaged in the naval or military service.

The committee, therefore, recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1875.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill H. R. 1844.]

The Committee on Claims, to whom was referred the bill (H. R. 1844) for the relief of John Hebenner, and sundry papers accompanying it, have examined and considered the same, and make this report:

The claimant alleges that in the year 1864 he was an enrolling-officer in the State of Illinois, and as such did much service and made considerable expenditures of his own money in the discharge of his duties. Afterward, in 1868, he made application to the War Department for pay, but his claim was rejected, and the Secretary of War says, "that he never made claim until August 13, 1868, and then payment was refused because the official records failed to verify his claim."

The committee refer to the report of the House Committee on Military Affairs, and dissent from the same. They think that the proofs are not sufficient to establish the claim of the petitioner, and recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1875.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill S. 268.]

The Committee on Naval Affairs, to whom was referred the bill (S. 268) for the relief of the officers and crew of the United States steamer Champion, have had the same under consideration, and submit the following report :

The bill authorizes the Secretary of the Treasury to distribute in the same manner as prize-money any money in the Treasury received on account of the sale of 572 bales of cotton alleged to have been captured by the United States steamer Champion, on or about the first of April, 1864.

This cotton was situate at the time of the capture on a bayou called Buffalo Creek, about ten miles inland from the Mississippi River, at a place known as the Elgee plantation, about sixty miles below Natchez, in the county of Wilkinson, and State of Mississippi. It had at one time been stored on the banks of the Mississippi River, but was removed into the interior for safety on waters where it was thought war-vessels would be unable to navigate.

It is not conclusively shown who were the real owners of this property, and in fact there are several claimants who have already instituted proceedings in the Court of Claims, which actions are now pending on appeal in the Supreme Court.

No prize-list was forwarded by the commanding officer of the vessel, and a special agent of the Treasury by the name of Camp appears to have taken it into his hands from the naval officers, claiming it for the United States as abandoned property under the act of March 12, 1863.

That the cotton was afterward sold under an agreement entered into on the 22d day of June, 1864, between the Secretary of the Treasury and John K. Elgee, one of the alleged owners, and the proceeds, after deducting expenses, invested in United States bonds and deposited in the hands of the assistant treasurer at Saint Louis.

The committee have not endeavored to ascertain the ownership of the cotton at the time of the seizure, for that is already in controversy in the courts and is a matter better fitted for inquiry there, where in the taking of testimony all parties in interest can be represented by counsel and the witnesses subjected to a cross-examination.

The principal question, and the only one to be considered, is, Was this cotton at the time of its seizure, on the first of April, 1864, under then existing laws, (situated on the land as it was,) a maritime prize of war?

If so, then it would be proper to inquire further as to the original ownership, and whether or not the owners were loyal to the Government

2 OFFICERS AND CREW OF UNITED STATES STEAMER CHAMPION.

of the United States; but we are relieved from that examination by reference to the statutes and decisions of the Supreme Court, which are conclusions as to this and all like cases, disposing of the claim of the officers and crew of the *Champion* by answering the first question in the negative. Whether or not this cotton was the subject of lawful capture on the 4th of April, 1864, must not be considered; for if it was, the committee would still be of the opinion that under the statute it was not liable to condemnation as a maritime prize. The capture was made within the State of Mississippi, and inside of the confederate lines; and if it were shown absolutely to have been the property of the so-called confederate government, that would not change the force of the act of March 12, 1863, which made it the duty of every officer or private of the regular or volunteer forces of the United States, or any officer who may take any abandoned property from persons in the insurrectionary States, or have it under his control, to turn the same over to an agent appointed by the Secretary of the Treasury, under whose charge the matter is put by the act, and who was to issue regulations in regard to such property. It is further provided that none of its provisions shall apply to "any lawful prize" of the naval force of the United States.

If this was a lawful prize, and the capture had been made by the Army and Navy jointly, then would the proceeds inure to the United States. By our statutes and the decisions of the Supreme Court the word "prize" has a legal significance, and evidently means maritime capture effected by maritime force only—ships, and cargoes taken by ships.

If this was enemies' property, then it was liable to capture and confiscation under the act of March, 1863; and if a prize of war, the right to relief in this case must have accrued by virtue of a statute; and the act of 1862, (12 Stats., 606,) which was the prize-law of the country at the time of the seizure, is silent as to the taking of property on land by naval forces. If there is no statute which gives the right, then there can be no prize, and whenever a claim like this is set up its sanction by an act of Congress must be shown; and if no such act can be produced, then the alleged right does not exist.

The English maritime law, including the law of prize, has only continued to be our law so far as adapted to the altered circumstances and conditions of the country.

In the cotton case of *Mrs. Alexander* (2 Wallace, p. 404) the points raised by the beneficiaries under this bill were all brought to the attention of the Supreme Court, and it was there decided that property captured on land by the officers and crew of a naval force of the United States is not maritime prize, and that under the act of March 12, 1863, the cotton which was captured from her plantation (four days before the seizure of the cotton in question by the *Champion*) should, under the act of March 12, 1863, be turned over to the Treasury Department.

The courts below may have made decrees adverse in their conclusions to that expressed as the rule of law governing the case cited, but we fail to find any decision of the Supreme Court or statute on the subject which sets aside or annuls the doctrine set forth by the learned Chief-Justice in giving the opinion.

It is suggested that in the *Farragut* prize-case, where the libel was filed in 1869, and claim put in for 16,000 tons of coal, which was taken on shore, and found by the district court to be a legal prize of war, that the Government took an appeal to the Supreme Court, and the court dismissed the appeal, confirming the decree of the court below; but, upon

examination, we find that the action of the court was by agreement of counsel, and that the law in the case was not decided. It would not be right to attribute the result of such an agreement to the action of the court, for it was not attained by its decision.

We think the case before us is in point to the one in 2 Wallace Rep., and from that decision and the enactments in force at the time of the capture of this cotton, we are unable to arrive at the conclusion that it was a lawful maritime prize of war.

We therefore report the bill adversely, and recommend that the committee be discharged from its further consideration.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1875.—Ordered to be printed.

Mr. WRIGHT, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of William Webster, asking additional compensation for building a wharf and keeping the same in repair, at Newport News, for the use of the Army of the United States, submit the following report:

This claimant was before Congress the third session of the Forty-second Congress, and, after a full hearing, the committee, through Mr. Machen, submitted the following report:

The Committee on Claims, to whom the above case was referred, report as follows:

That it appears from the statement of the case, as made by Captain Webster and sustained by many affidavits accompanying the same, he, Webster, in the year 1861, and after the commencement of the war of rebellion, entered into a verbal contract with Capt. G. Talmadge, chief assistant quartermaster at Fortress Monroe, Virginia, to build a wharf at Newport News, and keep the same in repair, for the use of the military of the United States, as long as the same should be needed, for which said Talmadge, assistant quartermaster as aforesaid, was to pay him a rental of \$250 per month. That he (Webster) did build said wharf, and it was used by the United States Government during the balance of the war, and finally measurably destroyed by a storm of wind dashing a number of United States vessels against the wharf. Capt. G. Talmadge, with whom the contract was made, died before any payment had been made on the contract. A number of other officers in service at Fortress Monroe also died or were killed in service, and in this way difficulties succeeded difficulties in the settlement of the claim until the war closed.

By the act of Congress of 1867, the settlement of claims of the character of Webster's is prohibited, and the only remedy now open to him is by the Congress of the United States. Webster's loyalty is fully established during the whole war; and the committee believe he has a just claim against the Government for the use of said wharf, but do not concur in the amount claimed. They reduce the amount to the sum of \$4,208.33, and recommend that the bill be so amended as to pay him that sum.

The bill accompanying this report was passed; the claimant was thereby allowed, and has received, without protest, as we understand, the sum of \$4,208.33 as therein provided. He now alleges that the committee and Congress made a mistake, in that, as he insists, the testimony therein filed shows that he was entitled to double that amount, being the sum originally or first claimed. The alleged mistake rests on or is established by his averment alone. The case, as your committee remember, received their most careful consideration, and he was allowed the utmost dollar to which he was entitled. The merits then being fully considered and deliberately passed upon, and the amount then allowed having been received by claimant, in the absence of all testimony even tending to show mistake, or that full justice was not done, your committee have no hesitation in asking to be discharged from the further consideration of this petition.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 1121.]

The Committee on Claims, to whom was referred the memorial of Thomas M. Redd, late of Paducah, Ky., praying compensation for the loss of his house and contents, submit the following report:

The memorialist was the owner of a frame residence, well and coal houses, situate on the corner lot at the intersection of Walnut and Hospital streets, in the city of Paducah, Ky., about two hundred yards distant from Fort Anderson. The fort was situate on the banks of the Ohio River, nothing but Locust street and a small gore of land intervening. The homestead contained six rooms, was well finished, and was worth, with the out-houses, \$2,791 at the time of its destruction. Mr. Redd's family consisted of himself, his wife, and four children. When General Forrest attacked Paducah, on the 25th of March, 1864, he family escaped across the river to Brookline, taking nothing with them except the clothing they had on, the silver plate, and a set of knives and forks.

A list is appended to the memorial exhibiting in detail the household property left in the house at the time it was vacated by the family, and this is valued by the memorialist at	\$3,182
And the value at which he places his house, \$2,389; his well-house, \$150; his fence, coal-house, and water-closet, \$252..	2,791

And the total of his claim is	5,973
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The attack on Fort Anderson by the forces under General Forrest commenced about 2 o'clock p. m., and continued until 6 o'clock in the evening. There was no more fighting after that hour, but the gun-boats in the river kept up a slow fire over the city, in the direction the rebel forces fell back, until 10 o'clock that night. During the attack the house of Mr. Redd and the high thick fence on his lot nearest the fort were used as a covert and shelter by the enemy to pick off the Union men inside the fort.

On the morning of the 26th of March, 1864, Col. S. L. Hicks, the Federal post commander of the military forces at Paducah, and in command of the fort, issued the following order:

[Special Order No. 53.]

HEADQUARTERS POST OF PADUCAH,
Paducah, Ky., March 26, 1864.

Maj. George F. Barnes, Sixteenth Kentucky Cavalry, will take a portion of his command and burn all the houses in musket-range of the fort from which the sharpshooters of the enemy fired upon us yesterday.

By order of Col. S. G. Hicks, commanding.

A. F. TAYLOR,
Post-Adjutant.
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The order was carried into effect by Major Barnes about 9 o'clock on the 26th of March, and Mr. Redd's house, being within easy musket-range of the fort, was burned, with its contents. It is proper to add that the house of Dr. J. M. Best, whose case has heretofore been before the Senate, was burned at the same time and under the same order.

In Dr. Best's case it was assumed, and the evidence probably warranted it, that on the morning of the 26th of March the enemy made their appearance in the distance and commenced taking position. Hence the order. But Mr. Redd wholly controverts this assumption, and insists that not an enemy was visible that morning, but, on the contrary, the advance-guard of Forrest's forces was at that moment at least twenty miles south of Paducah, in full retreat to Tennessee. As this is an important fact in the case, the committee submit the testimony.

Colonel Hicks himself swears: "The enemy made their appearance in the distance and commenced taking position. He gave the above order, No. 53, and he states, further, that all the houses that were burned on the morning of the 26th of March, in gunshot-range of the fort at that place, were burned under that order."

Henry Bartling, at the time of the attack a major in the Eighth United States Colored Heavy Artillery, was in the fort, and helped to defend it against Forrest's attack. On this point he says:

That at the time said Thomas M. Redd's house and its contents, with those of others, was set on fire and destroyed, as above stated, there were no rebel soldiers in Paducah, Ky., or near said Fort Anderson, and that he believes the advance-guard of the rebels, under General Forrest, was then at least twenty miles south of Paducah, Ky., in full retreat to Tennessee.

Joseph H. Wilson was in Paducah, acting as clerk in the Quartermaster's Department, at the time of the attack on Fort Anderson. On this point his testimony is as follows:

At the time of the conflagration the rebels were many miles from Paducah, Ky., on their retreat to the Tennessee line, no armed rebels having been seen in the city of Paducah, Ky., or near Fort Anderson, since the evening of the 25th of March, 1864.

John E. Williamson was captain of Company B, in the Sixteenth Regiment Kentucky Volunteer Cavalry. On the point in controversy he swears:

That at the time said Redd's house and its contents, with that of others, was set on fire and destroyed as above mentioned, there were no rebel soldiers in the city of Paducah, Ky., or near said Fort Anderson, and that he believes the advance-guard of said rebels, under General Forrest, were then at least twenty miles south of Paducah, in full retreat to Tennessee.

Although Major Barnes's affidavit is among the papers, he does not testify upon this point.

Here are three witnesses against one upon the question whether the enemy had re-appeared on the morning of the 26th of March, and two of them were officers under Colonel Hicks, present in the fort. If these witnesses are to be believed, then Colonel Hicks acted upon a mistake, and caused the destruction of Mr. Redd's property without any military necessity in fact, though there is no reason to doubt that he gave the order in good faith and on such evidence as was satisfactory to him. But the committee feel constrained to believe from the evidence that the enemy did not, in point of fact, re-appear on the morning of the 26th.

They are of opinion that, looking at the matter from Colonel Hicks's stand-point, the order was judicious and the destruction of the memorialist's house was justified on military principles, in order to save the men and public property inside the fort. Mr. Redd's house having thus been seized by the military authorities and consumed for the public good, the committee are clearly of opinion that the loss should be borne by the public, in whose interests it was destroyed.

One very material fact in the case remains to be stated. It appears by the testimony of E. A. Paine, a brigadier-general of volunteers, that, on the 6th of September, 1861, he was put in command of the district of Western Kentucky, with headquarters at Paducah, by General Grant, then commanding at Cairo, and was ordered to make a selection at once for a substantial field-work or fort, and construct it without delay; that on that or the next day he decided to build a fort around the United States marine hospital, located near the Ohio River, and found that there were several buildings within musket-range of the fort which he would be compelled to remove or tear down, among which was the dwelling-house of Redd; that this house was about 200 yards from the fort, and might give shelter to the enemy's sharp-shooters; that in a few days he was superseded by General Charles F. Smith. After a careful survey of the ground, General Smith decided to adopt the witness' plan, and issued an order organizing a board of survey, composed of colonels stationed at that post, and this board made a careful examination of the buildings within range of musketry, and condemned a number of them, including Mr. Redd's, and agreed upon a report; but before it was formally made out and signed, the troops were ordered to Fort Henry, and the board was never assembled afterward. In consequence of the failure of the officers to sign the report, said condemnation could not be perfected by the officers in command of the post.

He speaks of Mr. Redd as an undoubted Union man, an able and efficient officer, who assisted him very much in the discharge of his duties.

The fort planned by General Paine is Fort Anderson, and that has transpired which he anticipated, and for which General Smith provided a board of survey, viz, the condemnation and demolition of the houses in the neighborhood of the fort.

Had the examinations and conclusions of the board been reduced to writing, and signed, as was contemplated, little doubt, if any, would exist as to the liability of the Government; for then Redd's property would have been *taken*, and could have been constitutionally taken, only upon the condition of making him just compensation. The extent of the taking would have been defined, and the value of that taken ascertained. We do not think that the accident of the dissolution of the board by the necessities of the war, before the report could be formally drawn out and signed, makes any essential difference as to the obligation of the Government to make compensation. The Government has got what was needed for the security of the fort, and Redd has lost what the Government got.

Mechanics and house-builders testify that the valuation put by Mr. Redd upon his residence, out-houses, and fence is reasonable, and the committee find no difficulty in assessing their value at \$2,791 at the time of the loss. They have, however, found obstacles in the way of allowing him for the contents of the house. These he estimates at \$3,182, and furnishes a detailed list, with the prices annexed, and his

neighbors, some of them having peculiar opportunities of knowing, agree that the list is correct and the prices fair.

When this case was before the committee in 1872, they submitted the following views in their report in respect to the claim of Mr. Redd for his personal property :

But in looking over the catalogue it is apparent that much of the property was of a portable kind, such as an unbridled soldiery, in possession of the house for hours, would most probably have appropriated and carried away. It must be remembered that the men composing General Forrest's command were the same who a few weeks later perpetrated the atrocities at Fort Pillow, and it is not to be supposed that they would be restrained by any nice scruples from using and destroying the contents of the house. There were wine, whisky, blackberry cordial, and jellies in the house, jewelry, money, clothing, newly purchased goods, and a considerable quantity of bleached domestics, Irish linens, towels, &c. He fled from his house when the enemy came swarming through Paducah and the attack on the fort was imminent. His flight was so sudden it was impossible to remove his effects. The enemy were in possession of his premises for several hours; what they took and what they left, and what they destroyed or injured, it is of course impossible to be known. On this head the testimony is wholly silent. The claimant contents himself with showing what was in the house when he vacated it, and insists we should assume it was all there and undiminished in value when the house was burned. But the majority of the committee are of opinion that, difficult as the task must be, the memorialist is bound to establish the extent of his loss in consequence of Colonel Hicks's order, and that this is not done in showing what property he had in the house before the enemy took possession.

They also think it worthy of observation that the destruction of his personal property was in no sense a military necessity, and could be of no possible avail to the United States. It was not taken for the use of the Government, nor could its possession afford aid and comfort to the enemy. Its destruction was wholly unnecessary, and no reason is seen why the valuable personal effects were not removed by the military authorities before the torch was applied. It seems to have been the opinion of Colonel Hicks that the emergency was too great to admit of this. Nothing but a well-founded reason of that character could or should shield the officer from personal liability. Every fair presumption should be extended to an officer who acts in good faith on his convictions of duty. It would greatly embarrass him in his public duties were it understood to be the rule that, if he made a mistake in giving an order like this, he would be made to respond in damages from his estate. And so the committee are of opinion that though, from the evidence, it appears that the personal property could and should have been saved, Colonel Hicks thought differently, for reasons known to him, and his order is not to be condemned.

This course of reasoning would render the Government liable for the household property as well as the buildings, could it be known what was actually consumed and its value. But on this head nothing is proved, and the majority are unwilling to indulge in surmises.

The proof of the claimant's loyalty is wholly satisfactory. The committee therefore recommend his prayer be granted to the extent of \$2,791, and report herewith a bill for his relief, and respectfully recommend its passage.

Such was the conclusion of the committee in 1872. But since that time Mr. Redd has supplied proof upon the point then in doubt, viz, *What property was burned, what destroyed or removed by the enemy.*

Thomas H. Church was a near neighbor of Redd's, their houses being on the same street, and both within musket-range of Fort Anderson. He swears that all the fixtures, furniture, and effects contained in the house were set on fire and destroyed; that he knows, of his own personal knowledge, that the rebels did not destroy or carry off property out of the houses situate within musket-range of the fort, except some provisions and small articles of value; further, that the rebels could not have carried off plunder if they had desired to do so, because they had all they could do to get away with their lives, on account of the severity of the fighting and the nearness of this house to the fort. He further states that he has been informed that the rebels had positive orders not to destroy personal property in Paducah, for the reason that they had many rebel friends in that city. He adds, in conclusion, that he

passed by Redd's house soon after it was set on fire and in flames, and saw his house, furniture, and effects burn.

Another witness speaks still more pointedly, Maj. Henry Bartling, of the Eighth United States Colored Artillery. His troops were stationed at Paducah at the time of the attack, and his family resided in that city, near the house of Redd, with whom he was well acquainted. Passing by the particulars he gives of the battle, and coming to what he says upon the present question, he swears that the morning after the battle, and before the torch was applied to the houses, he visited those within musketry-range of the fort, and which the rebel sharpshooters had occupied the previous day, including Redd's house, and, with the exception of the pantries being broken open and eatables taken, there was no evidence of pillaging or plunder being committed, more than that the furniture, &c., seemed somewhat disarranged. He furthermore says, that it was absolutely impossible for Forrest's men to pillage to any extent whatever, for the reason that the fighting was very hot, and continued on both sides until the enemy retreated, which he did under fire from the fort. He gives another and forcible reason. While he was subsequently provost-marshal of the district of Southwestern Kentucky, a number of rebel soldiers, who had been in the fight at Paducah, came in and took the oath of allegiance before him, and all of them who were questioned upon the subject stated that General Forrest's orders were positive that no pillaging should be committed, as it would tend to demoralize his troops, and because there were a large number of citizens, residents of Paducah, who were in close sympathy with the rebellion. Besides this, the witness says such was the configuration of the ground where Redd's house was, and so near the fort and in plain sight, that it would have been impossible, without the greatest risk of death, to have carried off plunder. He expresses the belief that the contents of the house were destroyed by the fire, with the exception of the eatables, and such small trinkets as the family in their hasty flight could carry away. He was prompted to make this visit in the early morning, on account of the anxiety he felt for his family, and in order to learn whether they had escaped from the place or taken refuge with other Union families.

This is the substance of the new testimony. It was not before the committee when their former report was made. We think it clear from this that most of the personal property perished in the flames. The claimant values it at \$3,182, and in this estimate he is sustained by his neighbors. Deducting the injuries caused by the enemy, the eatables consumed, and making allowance for overvaluations, we think it fair to allow \$2,000 for the personal property destroyed by the fire. Adding this to the \$2,791, the value of the buildings, fences, &c., makes \$4,791, which the committee recommend shall be paid the claimant, in full of his losses; and they report herewith a bill for his relief, and recommend its passage.

S. Rep. 517—2

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1875.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT :

[To accompany bill S. 77.]

The Committee on Claims, to whom was referred the bill (S. 77) for the relief of Martha A. Booth, having had the same under consideration, submit the following report :

Mrs. Martha A. Booth, widow of Dr. W. A. Booth, late of Canton, Madison County, Miss., claims the sum of \$11,500, compensation "for the destruction of two dwelling-houses with out-houses and ten servants' houses, and a cotton-gin house, gin, and mill and press, stables and barn, and for the conversion of the materials of said houses and other buildings to the use of the Army of the United States, by which the said destruction and conversion were done."

Dr. Booth is shown to have been an uncompromising adherent of the Union, and to have been killed at his own door by a confederate soldier, because, it is alleged, of his unconcealed and outspoken Union sentiments. In these sentiments his wife, the present claimant, shared. If the other testimony necessary to establish her claim were as clear as that establishing her loyalty, there would be but little difficulty in disposing of her case; but it is not. She claims as the widow, and the testimony shows there are children of Dr. Booth, who may hereafter claim upon their legal rights. If her legal title were established, the evidence is wanting to show the property was converted or destroyed by such authority as would justify the committee in finding the Government liable for the payment of its value.

James M. Slaughter, from whom Dr. Booth purchased the property, and who testifies to its value, says :

I was not present when it was taken, used, or destroyed. I know the houses, fencing, and other property on the place were destroyed or taken away.

After enumerating the buildings and property, and placing their value at an aggregate of \$14,000, he continues :

I sold the property for less than that for the reason I wished to move away. I sold the property at a sacrifice to get away. I do not know who used the above articles or destroyed them; but I know they were lost to the owners of the place, the said Booth and his family; but the people and every one said they were taken or used by the Federal army under General Sherman on his return from his march to Meridian, Miss., in February, 1864.

W. H. Cassel, a druggist, says :

I do know that General Sherman's army, on its return from Meridian, in February, 1864, used and destroyed the houses, fencing, gin-house, barn and stables, &c. Part of his army camped on the place for four or five days, and part of the army was at my house at the same time. I saw cotton scattered around, but did not know whose it was. It was used for, or seemed to be, for bedding. The houses and fencing were, as I know, used for fire-wood. The names of two of the generals commanding these troops were Force and Smith.

C. C. Shackleford also testifies that he did not see the place when occupied by General Sherman's army, but did shortly afterward, and knows that the fencing, houses, gin-house, &c., were all gone. This is the whole of the testimony laid before the committee, except a letter of the Hon. James L. Alcorn, who has no knowledge of the facts connected with the case, but speaks in positive terms of the loyalty of Mrs. Booth and her husband.

It will be seen that we are not furnished with any information as to the manner in which this property was taken ; whether it was destroyed to prevent it from being of use to the enemy, by the unauthorized spoiliations of the soldiers of General Sherman's army, or used by the authority of the officers, and to supply the necessary wants of the Federal troops. Whatever may be the facts of the case, and however meritorious they may make this widow's claim for so much of the property as was appropriated by proper authority to the use of the Army, the testimony before the committee does not warrant them in recommending the passage of the bill. As it is evident, however, the claim has been submitted without any careful preparation of evidence, it is recommended that the bill be indefinitely postponed, and that the claimant have leave to withdraw her papers.

C

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Merritt Lewis, praying for an increase of pension, submit the following report :

This soldier, according to the statements of his petition, received a gunshot wound in the battle of Gettysburgh, in consequence of which he suffered amputation of his leg above the knee. He lost his hearing at the hospital in Baltimore in the spring of 1864, in consequence of scarlet fever, and since then has been totally deaf. He is in the receipt of a pension at the rate of \$24 a month for the loss of his leg, and now asks that his pension may be increased \$13 per month in consequence of the total loss of his hearing.

His petition is dated at Lansing, Mich., and sundry citizens of that State, personally acquainted with the petitioner, say he is an industrious, honest man, a good and loyal citizen, and that they believe his statements to be true and his request reasonable; and thinking so, they pray Congress to grant his petition.

Neither the petition of Lewis nor that of his fellow-citizens is sworn to, and no other evidence of deafness or its origin is submitted to us.

The original pension-law did not provide for specific permanent disabilities. Until June 6, 1866, the soldier was entitled only to \$8 per month pension. From June 6, 1866, to June 3, 1872, he was entitled by an amendment of the law to \$15 per month. From June 4, 1872, to March 3, 1873, he was entitled to \$18 per month, and since the last date he has been entitled to a pension of \$24 per month in consequence of the amputation being above the knee and his inability to use an artificial limb. The law of March 3, 1873, for the first time made provision for the loss of hearing of both ears, fixing the pension therefor at \$13 per month; but this was for that particular disability when not combined with any other. The theory of the petitioner is that this pension should be combined with the other, so as to make the aggregate \$37 a month. On the same principle, had he also lost the sight of both eyes he might have claimed \$20 additional.

If the law warrants this construction, then Mr. Lewis can obtain this additional pension at the Pension-Office. If it does not, we should hesitate to engraft this exception on the law. The claimant must elect, when he suffers under two or more specific disabilities, for which one he will claim the promised pension. He cannot combine all and claim the aggregate of the pensions provided for each one. He may be suffering from chronic diarrhœa, and so incapacitated as to be, in the language of the statute, "totally disabled." The pension for this is only \$8 per

month. If, at the same time, he suffers from the loss of one or both limbs, the loss of both eyes, and the loss of hearing in both ears, would it be thought a proper construction of the law, or right in itself, that he should combine and receive the pensions for these several classes of disability? The aggregate would be in excess of the highest pension for a private known to the law; higher than that provided for one wholly dependent upon the constant personal attendance and aid of another person. No. The applicant must make his election of the particular form of disability for which he will claim a pension. That is, undoubtedly, the fair construction of the law.

The committee feel unwilling to extend the law by an exception, to which this particular hardship moves us, for two reasons: that it will *be* an exception leading to further special legislation in that direction, and because of the liberality of the present law, allowing him a pension of \$24 a month on account of the loss of his leg.

They therefore ask to be discharged from the further consideration of his petition.



IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3274.]

The Committee on Pensions, to whom was referred the bill (H. R. 3274) granting a pension to John S. Corlett, submit the following report :

The evidence in this case shows that John S. Corlett was sworn into the United States service, as a teamster, by G. E. D. Diamond, Government agent at Saint Louis, who took him from Saint Louis to Rolla, Mo., where he joined a supply-train attached to a portion of the army under General Curtis. From there he went to Batesville, Ark., thence to Helena; that on the way from Batesville to Helena, on or about July 1, 1862, his mule-team took fright and ran down a hill and against a bank, in such a manner as to throw him between the mules and crush his leg. He was treated at the post hospital at Helena, and in the Saint Louis City Hospital, at which place his leg was amputated on December 12, 1863. The evidence shows that the injury which said Corlett received, and which caused the loss of his leg, was received while he was in the line of his duty and in the service of the United States, and that said injury was not received in consequence of any fault or negligence on his part.

A petition for the relief of said Corlett is signed by the judge of the eleventh district of Iowa, the circuit judge, and a large number of other highly reputable persons and prominent citizens of the district in which said Corlett resides.

The committee recommend the indefinite postponement of the bill, upon the ground that the applicant is not the subject of pension under existing laws.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3275.]

The Committee on Pensions, to whom was referred the bill (H. R. 3275) granting a pension to Eli Persons, respectfully report :

Eli Persons's application for an invalid pension, on account of total blindness, the result of exposure while doing picket-duty on Licking River, Kentucky, was rejected by the Pension-Office for the reason that the Assistant Adjutant-General of the War Department reports that his name does not appear on the rolls of his Office in the company in which service is alleged.

Among the evidence on file in this case is the affidavit of Capt. John Kinney, who states that he enlisted said Eli Persons in Company K, Seventy-third Ohio Infantry Volunteers, August 31, 1862, and that said Persons was by him sworn into the United States service, he being at that time the duly-authorized recruiting-officer for said Seventy-third Regiment; and that said Persons, after having been examined by a surgeon, passed as fit for the service, and did serve as a private in said company and regiment. Also, among the papers on file is the original enlistment-roll of said company and regiment, with the name of Eli Persons properly inscribed thereon.

Your committee recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3713.]

The Committee on Pensions, to whom was referred the bill (H. R. 3713) granting a pension to Sarah S. Cooper, submit the following report:

The pensioner, Sarah S. Cooper, is the widow of Wickliffe Cooper. When the late rebellion broke out, her husband entered the United States service as a private, in 1861; was soon made lieutenant; afterward promoted to the colonelcy of the Fourth Regiment Kentucky Veteran Cavalry, in which capacity he served till the close of the war, in 1865. Colonel Cooper was a brave and gallant officer, a good soldier, prompt and faithful to duty, and rendered his country important service during the late war. His commanding officers speak his praise in the highest terms. He was afterward made brevet-colonel in the Regular Army on account of his meritorious services. In 1866 Colonel Cooper was appointed major of the Seventh United States Cavalry, in which position he served with his regiment on the western frontier till June 8, 1867, when he perished by his own hand. The evidence from the War Department shows that he committed suicide by shooting himself through the head with a revolver, while in a fit of delirium tremens, on the evening of the 8th of June, 1867, while encamped on Medicine Lake Creek, about fifty miles southeast of Fort McPherson, Nebraska Territory.

The committee, believing that under no interpretation of the pension laws can this case be brought either within their letter or their spirit, recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3008.]

The Committee on Pensions, to whom was referred the bill (H. R. 3008) granting a pension to John J. Bottgar, submit the following report:

The evidence shows that John J. Bottgar enlisted as a private in Company K, in the 30th Regiment of Iowa Infantry Volunteers, on the 16th day of August, 1862, for three years, and was discharged April 7th, 1863, for disability. The evidence further shows that he was drafted on the 2d of November, 1864, and was accepted into the service and served in Company C, 16th Iowa Volunteers, until July 19th, 1865, when he was discharged. No evidence of his disability appears upon the rolls of his company. The certificate of the medical inspector of the United States Army, Grayson Hospital, Memphis, Tenn., dated April 6th, 1863, states that said disability of said Bottgar was phthisis pulmonalis and chronic rheumatism, both originating about four months since; has not been able for duty since that time; has spit blood for the last three months; is not emaciated, but quite lame; phthisis pulmonalis arising in the service; disability total. Said Bottgar made application to the Pension-Office for an invalid pension, in consequence of "a mash" or hurt of his breast, received on or about the 31st of December, 1862, at Helena, Ark., while he was detailed to help unload a steamboat loaded with Government stores; that while he and other soldiers were rolling a large box of Government clothing up a steep bank, his feet slipped, and the box came back on his breast and "mashed it," so that he spits blood and has smothering spells, which cause him to have a general weakness. One of the examining surgeons of the Pension-Office reports that said Bottgar "is suffering from epilepsy, evidently of traumatic origin." His convulsions followed as the result of an injury to his breast, while in the United States service. I can trace the origin of the disease to no other cause; that there is no trace of any nervous affection peculiar to the family, and the applicant was perfectly healthy previous to the injury." The "smothering spells" are convulsions, and the "spitting of blood" mucus tinged with blood evolved during the convulsions. Labor of any kind now induces an attack."

The Pension-Office has rejected the applicant's claim for pension for the reason that he is suffering from a disability other than that on account of which he claims pension. S. D. Cook, M. D., testifies that he was late captain of Company K, 30th Regiment of Iowa Infantry Volunteers, and that he was detailed on extra duty from command of his company as a physician and surgeon from about the middle of Novem-

ber, 1862, to the middle of May, 1863, and that he well knew John J. Bottgar, of his company, and that said Bottgar was discharged for injury, on or about the 6th day of April, 1863, having become disabled from doing duty on or about the last of December, 1862, while in the service of the United States, in the line of duty as a soldier, in the manner and at the place as follows: an injury received against the breast, at Helena, Ark., while on detail unloading a boat loaded with Government stores. That he treated said Bottgar for said injury from the time he received it until about the first of February, 1863, when said soldier grew so much worse that he was put on a hospital-boat and sent to Memphis, Tenn., to go into the hospital there; that said soldier was in good health at the time he entered the service.

J. B. Gallaher testifies that he was lieutenant; that on or about December 31, 1862, he had command of Company K, 30th Regiment Iowa Volunteers, and said Bottgar while in the line of duty received an injury to his breast, at Helena, Ark., while unloading a steamboat loaded with Government stores, by rolling a large box of clothing up a steep bank, which was let loose by the other soldiers so that it came back on said Bottgar's breast, and injured him so that he was never able to do any more duty while connected with the regiment.

Dr. A. A. Graham, in his affidavit, dated October 19, 1870, testifies that he has been well acquainted with said Bottgar for the past thirteen years, and that he has been his physician from the time he was discharged from said Company K, 30th Regiment Iowa Volunteers, to date of this affidavit, and that said Bottgar is affected with hemoptysis, or bleeding spasms, caused by an injury or hurt against the breast, and was affected with said injury on his return home; and that said soldier is not affected with phthisis pulmonalis or consumption; and that he believes said soldier was sound and free from the aforesaid injury, in every particular whatever, at enlistment; and that he has treated said soldier from date of discharge from the 30th Regiment Iowa Volunteers to date of this affidavit, less the time he served in the 16th Regiment of Iowa Volunteers, for the aforesaid injury; and that said injury has not been, and is not now, aggravated or prolonged by intemperance or other bad habits or practices, in any manner whatever.

The committee believe that the objections which were urged at the Pension-Office were technical, and the case is meritorious. They therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3716.]

The Committee on Pensions, to whom was referred the bill (H. R. 3716) granting a pension to Elizabeth B. Dyer, submit the following report:

Elizabeth B. Dyer is the widow of Alexander B. Dyer, whose military history, as reported by the Assistant Adjutant-General United States Army, is as follows: Alexander B. Dyer graduated from the United States Military Academy and was appointed second lieutenant, Third Artillery, July 1, 1837, was appointed second lieutenant of ordnance July 9, 1838, promoted to first lieutenant March 3, 1847, captain March 3, 1853, and major March 3, 1863. Accepted appointment as Chief of Ordnance, with rank of brigadier-general, September 15, 1864, and died at the Washington Arsenal May 20, 1874.

The Commissioner of Pensions reports that on the 22d day of July, 1874, said Elizabeth Dyer was granted a pension-certificate, 165,711, as widow of Brig. Gen. Alexander B. Dyer, at the rate of \$30 per month, and \$2 per month for each minor child, commencing on the 21st day of May, 1874.

Although said Elizabeth B. Dyer is already receiving the highest amount of pension allowed by law, she appeals to Congress to have her pension increased to \$50 per month.

The committee, referring to the Senate report in H. R. 3427, second session Forty-third Congress, as embodying their conclusions to similar cases, recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 2949.]

The Committee on Pensions, to whom was referred the bill (H. R. 2949) granting a pension to James R. Borland, late a private in Company F, Fourth Regiment Veteran Reserve Corps, submit the following report:

James R. Borland, late a private in Company C, Forty-fifth Regiment Illinois Volunteers, transferred to, and discharged from, Company F, Fourth Regiment Veteran Reserve Corps, states in his affidavit that he was ruptured in his right groin in June, 1863, in the line of his duty, while assisting a wounded man out of an ambulance in the rear of Vicksburgh; that he was in regimental hospital only, and that it is impossible for him to secure surgeon's certificate, on account of the death of the surgeon of the hospital in which he was treated. He further states that at the time of his rupture he was on detached service, and therefore cannot get the certificate of his captain.

Several witnesses testify that said Borland was sound at the date of his enlistment, and it is proven by the same witnesses that he was ruptured at the expiration of his service, and medical evidence is furnished that said injury has existed since his discharge. The Adjutant-General United States Army reports that said Borland belonged to said company and regiment, and was present as hospital nurse in May and June, 1863.

The committee therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. MITCHELL submitted the following

REPORT:

[To accompany bill S. 1065.]

The Committee on Claims, to whom was referred the petition of J. W. Drew, late additional paymaster United States Army, having had the same under consideration, submit the following report:

Your committee find from the evidence submitted with said petition that said paymaster was stationed in San Francisco, Cal., from June, 1864, until March, 1869, paying the Army in the Division of the Pacific, under orders of General Hiram Leonard, Deputy Paymaster-General United States Army, who certified March 16, 1869, that said Paymaster Drew "had made all required returns and turned over balance of public funds and property in his hands."

Charles E. Nongues, in his sworn statement, submitted with said petition, says he was a paymaster's clerk, United States Army, for several years, and that he served in such capacity with said Paymaster Drew, the petitioner, from September, 1867, until March, 1869, and that he made up his accounts for the months of November and December, 1868, and that all the moneys for which said paymaster was responsible on the first day of November, 1868, or for which he became responsible during November and December, 1868, were duly accounted for by proper vouchers, except the amount in his hands on the 31st day of December, 1868, which has been accounted for in subsequent accounts rendered and allowed by the accounting officers of the Treasury.

And it further appears from his testimony that the accounts of petitioner for the months of November and December, 1868, including proper vouchers accounting for all moneys with which petitioner was chargeable during said two months, except moneys on hand December 31, 1868, and which were accounted for by him afterward, were properly made up and mailed in San Francisco, Cal., to the proper officer (the Paymaster-General United States Army) at Washington City.

Said paymaster in his own affidavit corroborates the statements of General Leonard contained in his certificate of March, 1869, and the sworn statement of his clerk, and further says that it was not until he had been mustered out of service over two years that he was informed that his accounts for the aforesaid two months had never been received at the proper Departments at Washington, though they had been regularly made up and transmitted by mail in like manner as his accounts had been transmitted for more than four years previously, and said accounts never were received at said Departments, but were lost or miscarried.

Your committee find that when petitioner was mustered out of service in San Francisco, Cal., he left all his papers in that city, including his retained accounts and vouchers as paymaster, and that many of his retained papers have been lost or destroyed, and among these missing papers are included a portion of his retained vouchers for payments made in November and December, 1868, amounting to the sum of \$20,319.88; that the whole amount disbursed by the said petitioner during the said months of November and December, 1868, was \$60,957.22, and for which amount proper vouchers were forwarded to the proper Department at Washington in January, 1869, but none of which were ever received at such Department; that petitioner since discovering that fact has produced duplicate vouchers to the amount of \$40,637.34, which have been audited and allowed to petitioner by the proper accounting officers of the Treasury, and the balance of said retained duplicates have been lost.

The certificate of Deputy Paymaster-General Leonard, of date March 16, 1869, on file in Second Auditor's Office of the Treasury, shows that Drew had made all the returns required of him, including, of course, the returns of November and December, 1868.

The petitioner served under General Leonard and received all his orders from him, and his accounts passed under General Leonard's inspection before they were forwarded to Washington after they were prepared and ready for transmission.

The petitioner also filed statements every month with his chief, General Leonard, showing the condition of his accounts, amount disbursed every month, funds on hand, &c., so that his chief knew at the time he made the certificate that Paymaster Drew's accounts had been duly rendered. The affidavit of Nongues, the clerk of petitioner, shows the existence of proper vouchers accounting for all the moneys for which Paymaster Drew was responsible in November and December, 1868, at the time he made up the accounts for those two months; and your committee find that said Drew did properly disburse and account for all such moneys.

Your committee further find that petitioner's accounts for November and December, 1868, were transmitted as made up by his clerk to the proper Departments at Washington, and are clearly of the opinion that petitioner is entitled to relief, and they report back Senate bill No. 1065 with the following amendment, and recommend its passage:

Add to said bill the following words:

"Provided, Said accounting officers shall be satisfied that said disbursements were made, and in determining the same secondary evidence may be received."

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 1054.]

The Committee on Pensions, to whom was recommitted, by order of the Senate, the bill (H. R. 1054) granting a pension to Jefferson W. Davis, first lieutenant of Company F, Sixty-fourth Regiment New York Volunteers, submit the following report:

On June 9, 1874, this bill was reported back to the Senate with a recommendation that it pass, with one amendment. The amendment recommended was that the pension granted to the lieutenant should commence from and after the passage of the act, and not from the date of his discharge. It seems that he was wounded in battle on the 12th of May, 1864, while first sergeant of Company F, in consequence of which he lost an arm, and was pensioned as a sergeant. His present claim is that he was commissioned first lieutenant on 28th of May, 1864, to rank from 12th of May. He made that claim at the Pension-Office, and it was rejected for the reason that George R. Fish was paid for and inclusive of May 12, the date his rank as first lieutenant took effect, and consequently that no vacancy existed. It is now asserted by Lieutenant Davis that Lieutenant Fish was killed in battle on the 12th day of May, 1864, and should receive the pension of a lieutenant from the last-named date, and that therefore a vacancy existed on that day in his office which his commission covered.

There is no fraction of a day in law in cases of this kind. Lieutenant Fish was undoubtedly first lieutenant of the company on that day, no matter whether killed early or late. There could be no vacancy in the office, therefore, in law, until the 13th. We think, therefore, the Pension-Office ruled right on the question in determining that Davis was first sergeant and not first lieutenant on the day he was wounded.

But this bill gives him the pension of first lieutenant, and, as amended, from the date of its passage. What he asks is arrears of pension as lieutenant, from May 12, 1864. But as granting him a pension of that rank at all is a matter of grace and a departure from the general rule, Congress may establish the measure of its liberality. The committee gave the increase from the passage of the act, in order to preserve uniformity with their former rulings. In the administration of the pension laws, there have accumulated claims for arrears by pensioners of upward of \$9,000,000. In view of this fact and the condition of the Treasury, the committee feel unwilling to establish a precedent in this case of granting arrears.

They therefore report the bill back to the Senate, adhering to the amendment, and recommend its passage with that amendment.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1875.—Ordered to be printed.

Mr. KELLY submitted the following

REPORT :

[To accompany bill S. 940.]

The Committee on Public Lands, to whom was referred the bill (S. 940) granting six hundred and forty acres of land to the widow and heirs of James Sinclair, deceased, report as follows :

James Sinclair, a white man, was born in Rupert's Land, British America, in the year 1811, and became a naturalized citizen of the United States, having declared his intention to become such in Saint Paul, Ramsey County, Minnesota, in October, 1849. He was married to Mary Campbell on the 20th day of April, 1848, and, emigrating to Oregon, arrived in that Territory on the 24th day of November, 1850.

About the middle of September, 1855, he settled on a tract of land, containing six hundred and forty acres, in Walla Walla Valley, Washington Territory, particularly described in notification of unsurveyed lands No. 1403, filed in the United States land-office at Vancouver, Wash., on the 30th day of November, 1855.

On this tract of land he erected a dwelling-house and several out-houses, and, with his family, commenced to reside on it some time toward the latter part of September, 1855. During the same month he took with him to his claim between five and six hundred head of cattle and fifteen or twenty head of horses. He resided on the tract of land not more than a month or two, when Indian hostilities commenced in that section of the country, and all the settlers, including Mr. Sinclair and his family, were removed from Walla Walla Valley, by order of Nathan Olney, United States Indian agent, for the purpose of securing their safety from the attacks of the Indians. So hurried was their removal, that Mr. Sinclair's cattle and horses were left behind on his claim, and with the exception of about fifty head of the former, all were killed by the hostile Indians or taken for beef by the Oregon volunteers engaged in suppressing the insurrection. All the buildings on his land-claim were destroyed during that war. On the 29th March, 1856, while on his way to look after his cattle, Mr. Sinclair was killed by the Indians at the Cascades of the Columbia, leaving at the time of his death a widow and three children, who now ask that the title to the land upon which he settled may be confirmed to them.

A year or two after the death of Mr. Sinclair, the military post of Fort Walla Walla was established four or five miles from where his land-claim was located, and at the same time the Sinclair claim was selected and taken as a timber reservation, for the purpose of supplying the military post with timber and fuel. The timber was cut off and used

by the United States troops long ago, and the land is now useless as a military reservation; and for this reason it was transferred to the control of the Secretary of the Interior, and authorized to be sold by virtue of two acts of Congress, approved February 24, 1871, and June 5, 1872.

The fourth section of the act of Congress approved September 27, 1850, commonly known as the Oregon donation-land law, is as follows:

And be it further enacted, That there shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, above the age of eighteen years, being citizens of the United States, or having made a declaration according to law of his intention to become a citizen, or who shall make such declaration on or before the 1st day of December, 1851, now residing in said Territory, or who shall become a resident thereof on or before the 1st day of December, 1850, and who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act, the quantity of one half-section or three hundred and twenty acres of land, if a single man; and if a married man, or if he shall become married within one year from the 1st day of December, 1850, the quantity of one section or six hundred and forty acres, one half to himself and the other half to his wife, to be held in her own right; and the surveyor-general shall designate the part inuring to the husband and that to the wife, and enter the same on the records of his office.

The eighth section of the same act is as follows:

That upon the death of any settler, before the expiration of the four years' continued possession required by this act, all the rights of the deceased under this act shall descend to the heirs at law of such settler, including the widow, where one is left, in equal parts; and proof of the compliance with the conditions of this act up to the time of the death of such settler shall be sufficient to entitle them to the patent.

The notification No. 1403, dated the 9th day of November, 1855, and filed by James Sinclair in the United States land-office at Vancouver on the 30th day of the same month, and certified as correct by William Stephens, the register of the land-office at Walla Walla, is in due form of law. A copy of this notification is hereto annexed, marked A. The residence of Mr. Sinclair on the tract of land claimed by him is proven by the testimony of John Moar, George Taylor, H. M. Chase, James Boyes, Andrew D. Pamburn, William McBean, and others. The fact that the Sinclair claim was the same as that taken and occupied as a timber reservation by the United States military authorities is established by the testimony of John Moar, James Boyes, H. M. Chase, Mrs. Mary Sinclair, and others. It is also known, as a part of the history of that country, that the Walla Walla timber reservation was located upon the land-claim of James Sinclair, deceased.

The death of Mr. Sinclair, on the 29th day of March, 1856, is also proved by a number of witnesses, having been killed on that day by hostile Indians at the Cascades of the Columbia.

All these facts being proven by clear and indisputable testimony, there can be no doubt that by virtue of the 8th section of the act of September 27, 1850, the title to the land embraced in his notification became perfected in his heirs at law and his widow, Mary Sinclair.

The United States surveys of the public lands were not extended over that section of the country until after the location of the timber reservation by the military officers. As soon, however, as they were made, or shortly afterward, Mrs. Mary Sinclair made an effort in the United States land-office in Washington Territory to establish the title of the widow and heirs of James Sinclair to the land embraced within the limits of his notification. The register and receiver of the land office, however, declined to receive her proofs, because the claim was included within the boundaries of the military reserve. After the passage of the act of Congress of February 24, 1871, authorizing the transfer of the Walla Walla reservation to the control of the Secretary of the In-

terior, to be sold, Mrs. Sinclair again made an effort to establish the title of herself and children to the land in question, and again the register and receiver of the United States land-office at Walla Walla declined to receive her evidence of title, for the reason that the act of Congress referred to directed the Secretary of the Interior to sell the land embraced in the military reservation to the highest bidder, at not less than one dollar and twenty-five cents per acre.

Inasmuch as it appears that the widow and heirs of Mr. Sinclair have done all they could to assert their rights in the premises, and those rights appear to be unquestioned and unquestionable to the land embraced in his notification, the committee recommend that the land included in what is known as the military timber reservation at Walla Walla, 641 $\frac{64}{100}$ acres, be granted to the widow and heirs of James Sinclair, as set forth in Senate bill 940.

A.

No. 1403.]

[Received November 30. 1855.

TERRITORY OF WASHINGTON.

NOTIFICATION.

To the register and receiver of Washington Territory of settlement on public lands not yet surveyed :

Pursuant to the act of Congress approved on the 14th day of February, 1853, entitled "An act to amend an act entitled 'An act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and make donations to settlers of the said public lands,' " and the amendments thereto,

I, James Sinclair, of Walla Walla County, in the Territory of Washington, hereby give notice of my claim to a donation of 640 acres of land, particularly bounded and described as follows: Beginning at the southwest corner at a stake branded J. S.; thence running due north four hundred and eighty rods to a stake; thence due west two hundred and forty rods to a stake; thence due south four hundred and eighty rods to a stake; thence two hundred and forty rods to the place of beginning.

(Signed)

JAMES SINCLAIR.

[Diagram.]

Affidavit of settlers on unsurveyed lands claiming under the fourth section of act of 27th September, 1850, and the amendments thereto.

James Sinclair, of Walla Walla County, in the Territory of Washington, being first duly sworn, says that he is a white settler on the public lands in said Territory, and that he arrived in Oregon on the 24th day of November, 1850; that he is a naturalized citizen of the United States, having declared his intention of becoming such in October, 1849, in Saint Paul, Ramsey County, Minnesota Territory; and that he was born in Rupert's Land in the year 1811; that he has personally resided upon and cultivated that part of the public land in the Territory aforesaid and particularly described in the annexed notification to the register and receiver of said Territory continuously from the 15th day of September, 1855, to the 17th day of October, 1855. And he further says that he is intermarried with Mary Campbell, his wife, and that he was legally married to her on the 20th day of April, 1848, in Red River Settlement in Rupert's Land.

(Signed)

JAMES SINCLAIR.

Subscribed and sworn to before me this day of ninth day of Novr., 1855, in The Dalles, Wasco County, O. T.

J. A. SIMMS,

Clerk of the District Court of Wasco County, O. T.

Proof of commencement of residence and cultivation on land not yet surveyed.

John Moar, of Walla Walla County, in the Territory of Washington, being first duly sworn, says that he is in no way interested in the tract of land claimed as a donation

right by James Sinclair, and particularly described in the annexed notification to the register and receiver of Washington Territory; that he is personally acquainted with said James Sinclair, and knows that he has personally resided upon and cultivated said tract of land continuously from the 15th day of September, 1855, to the 17th day of October, 1855.

(Signed)

JOHN MOAR.

Subscribed and sworn to before me this day of 9th Novr., 1855.

J. A. SIMMS,

Clerk of the District Court, Wasco Co., O. T.

Charles Ogden, of Walla Walla County, in the Territory of Washington, being first duly sworn, says that he is in no way interested in the tract of land claimed as a donation right by James Sinclair, and particularly described in the annexed notification to the register and receiver of Washington Territory; that he is personally acquainted with said James Sinclair, and knows that he has personally resided upon and cultivated said tract of land continuously from the 15th day of September, 1855, to the 17th day of October, 1855.

(Signed)

CHARLES OGDEN.

Subscribed and sworn to before me this day of 9th Novr., 1855.

J. A. SIMMS,

Clerk of the District Court of Wasco County, O. T.

Affidavit of witness claiming unsurveyed lands as a married man.

John Moar, of Walla Walla County, in the Territory of Washington, being first duly sworn, says that he is personally acquainted with James Sinclair, the person who claims a donation right to the tract of land described in the annexed notification to the register and receiver of said Territory, and Mary Campbell, his wife; that he has known them to live together as man and wife from the 20th day of April, 1848, to the 9th day of November, 1855, and that they are and were reputed by their neighbors as such during said period.

(Signed)

JOHN MOAR.

Subscribed and sworn to before me this day of 9th Novr., 1855, in The Dalles Wasco County.

J. A. SIMMS,

Clerk of the District Court of Wasco County, O. T.

[Indorsements.]

Notification of settlers on unsurveyed lands.

No. 1403.

Dated Nov. 9, 1855.

Filed Nov. 30, 1855.

LAND-OFFICE, WALLA WALLA, W. T., July 19, 1871.

I hereby certify that the foregoing is a true copy of the notification of James Sinclair for a donation claim now on file in my office.

WM. STEPHENS,

Register.

. IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1875.—Ordered to be printed.

Mr. NORWOOD submitted the following

REPORT:

[To accompany bill S. 1154.]

The Committee on Pensions, to whom were referred the petition and papers of Capt. William Williams, of Pittsburgh, Pa., for pension, report the following :

That it appears, from evidence submitted to them, that said Williams was commissioned as captain of Company A, First Battalion Cavalry Pennsylvania Volunteers, on the 3d of July, 1863; was mustered into service on that day in the United States Army, and was honorably discharged on the 29th of December, in that year; that, about the 1st day of November, in that year, while in the line and performance of his duty as captain, in crossing the Youghiogeny River, his horse stumbled and said Williams was thrown into the water and got his clothes thoroughly wet; that, having ridden thirteen miles in that condition, he took severe cold, and the inflammation fell in his eyes; that he was furloughed at once on account of this affection; that the furlough was afterward extended, and that Dr. Samuel T. Gray, then surgeon of the First Battalion Pennsylvania Cavalry, treated him for acute *conjunctivitis*, and recommended a furlough for twenty days. Said Gray also states that, in his opinion, "said Williams's eyes were injured from the chill which followed his being thrown into the river in the manner stated."

Frank H. White testifies that he was first lieutenant of said company, and that he was left in command thereof "for nearly one month, during which time Captain Williams lay sick and blind from injuries received while in this detached service." The detached service here mentioned, it is necessary to say, was to arrest certain deserters, and to enforce the draft against some men who were evading it.

It further appears by the affidavit of James Verner, of Pittsburgh, Pa., that the eyes and health of said Williams were good before he entered said military service, and by the certificate of Dr. Driukard, of Washington City, given August 7, 1874, that Williams's eyes are in such condition of disease as to warrant belief in Williams's statement of practical blindness, and his opinion that total blindness will result. Dr. Gray, the surgeon above mentioned, also states in his certificate, that he had examined Williams's eyes that day, (September 16, 1874,) and that he found them impaired very much, and, in his opinion, permanently, with *glaucoma* and *amaurosis*. He further certifies that, in his opinion, Williams's eyes "became injured from being thrown into the river—on account of the chill." It further appears by the certificate of Drs. John Dickson and W. D. Kearns, of Pittsburgh, Pa., that they examined Williams's

eyes on the 28th of May, 1867, and found "that he was suffering from *glaucoma*, and that there was very little hope of any improvement."

While there was no evidence before the committee to show the diseased condition of the petitioner's eyes between the date of his discharge and the date in 1867, when Doctors Dickson and Kearns examined them, still there is the fact of their condition at the time of said examination, which shows that his eyes must have been diseased some time prior to the date of said examination. And we have the medical opinion of the surgeon who treated Williams in the first attack, that the present disease is but the continuation of the *conjunctivitis* which he treated in November, 1864.

Your committee therefore report by bill in favor of petitioner's prayer for a pension.



IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1875.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 979.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 3860) for the relief of Lieut. Henry Jackson, Seventh United States Cavalry, submit the following report :

This is a bill to direct the accounting officers of the Treasury to credit the account of Lieutenant Jackson with the sum of \$1,271.34, amount obtained from him, as property and disbursing officer of the Signal-Service, on false and fraudulent vouchers.

The record shows the frauds perpetrated to be the payment of one wholly fraudulent voucher, and the raising of two others to a larger amount, and payments made to Sergt. D. H. Sackett, Signal-Service, on receipts presented by him, which had also been raised ; the total amount of all being the sum of \$1,271.34.

It appears also from the record that, in September, 1873, an agreement was made with one Matt. France, of Colorado Territory, for the delivery of sixty cords of wood on the summit of Pike's Peak, and Sergeant Sackett, in charge of that signal-station, telegraphed that the wood had been delivered ; whereupon vouchers were made out and sent to Mr. France for his signature, and when returned signed were duly paid. It was subsequently discovered that only forty-eight, in lieu of sixty, cords of wood were delivered, defrauding the Government of \$264.

On December 2, 1873, Sergeant Sackett made an agreement with this same France to carry supplies to the summit of Pike's Peak ; and on December 26 a statement of articles and weights carried by said France, under this agreement, was received from Sergeant Sackett, showing that France had transported 7,634½ pounds. Vouchers accordingly were made out, sent to France for signature, returned properly signed, and paid. It subsequently transpired that only 5,537 pounds were transported, involving a fraud upon the Government of \$251.70.

The third fraud was perpetrated by Sergeant Sackett, in collusion with one G. M. Brown, of Colorado. Instructions had been sent Sergeant Sackett on the 18th of November, 1873, to hire two men to clear away dead timber from the telegraph-line, from the summit of Pike's Peak to the base of the mountain, at \$4 a day ; and on the first of December authority was given him to increase this force to five, in order to expedite the work. Receipts were subsequently sent in by Sergeant Sackett signed by these men, at \$4 per diem when, on an examination of the transaction, he had paid them only \$1.25 per diem, and rations. Receipts had been taken in pencil, for dates and amounts, and these were then filled in, either by him or Brown, with false dates and figures, involving a fraud of \$755.64 ; and a total fraud, in all, of \$1,271.34.

Criminal proceedings have been instituted against France and Brown, and Sergeant Sackett was arrested, confined, and subsequently escaped, and is now a deserter.

Lieutenant Jackson, being the disbursing officer of the Signal-Service, paid these vouchers, as shown by the record, in the ordinary line of his duty, and within and according to the rules and regulations of the Signal-Service. All purchases for this service are paid and accounted for by him to the Treasury Department, and such purchases are made as necessity requires at all points in the United States where there are stations of observation. All purchases are audited in the office of the Chief Signal-Officer, in Washington.

When authority is given to purchase supplies or incur expense, the sergeant or other person in charge makes the purchase and sends in his receipt for the article, accompanied by the bill. The account is then audited, and, if found correct, vouchers are made out and transmitted, accompanied by a check, payable to the order of the proper party, to whom the sergeant delivers the check, upon signature of the vouchers, which are then returned, signed, to the office of the Chief Signal-Officer by the purchasing sergeant.

In the cases of fraud here presented, the record shows that the mode of procedure as to purchasing and paying was in strict accord with the rules of the service, and that the money was obtained by conspiracy, cheat, and fraud, from which the disbursing officer had no means of protecting either the Government or himself. But for the vigilance of the officers of the Signal-Service the frauds would not have been detected; but having been discovered, it becomes necessary to pass a bill to relieve Lieutenant Jackson, in order that his involved accounts with the Treasury may be settled. The difficulty or trouble originates in the fact that, in default of commissioned officers in the Signal-Service, it becomes necessary to trust enlisted men to make purchases, who, while they may be honest, or otherwise, cannot well be held to the same responsibility as commissioned officers. This is, however, the only case of fraud known and discovered, so far, in this service, by this officer, and he is entitled to the relief provided in the bill, of which the committee recommend the passage.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1875.—Ordered to be printed.

Mr. HOWE submitted the following

REPORT:

[To accompany bill S. 1156.]

The Committee on Foreign Relations, to whom was referred the petition of Joseph H. Colton, asking the intervention of the Government of the United States, in aid of his claim upon the government of Bolivia, together with the accompanying papers, ask leave to submit the following report :

The memorialist represents that in 1858 he contracted with Col. Juan Oudarza and Commandant Juan Mariano Mujia, duly authorized in that behalf by the Bolivian government, to engrave and publish on copper-plate a map of the republic of Bolivia. The map was to be put on canvas, fitted up with moldings, rollers, and rings, and to be six feet in length by five feet in height. Of such a map he agreed to print and deliver to that government ten thousand copies. For the work, the Bolivian government agreed to pay \$25,000 in gold. Two thousand dollars of that sum were to be paid on the commencement of the work, and were paid. The balance, of \$23,000, was to be paid on the delivery of the maps, or soon afterward. Of the balance, no part has been paid.

The contract is said to have been made with the memorialist at his place of business in the city of New York, where the memorialist at that time resided, and has since continued to reside. The memorialist represents that the work was executed at an extremely low price; and he avers that the Bolivian government actually sold 2,000 copies of the same maps at twelve dollars per copy, and 3,000 other copies at five dollars per copy.

The justice of Mr. Colton's claim appears to have been frequently recognized by the Bolivian government in the most solemn manner. Among the papers accompanying the memorial is an original decree, signed by President Morales, of which the following is a translation:

MINISTRY OF FINANCE AND INDUSTRY,
La Paz, Bolivia, February 1, 1872.

In view of the contract made in New York on the 21st of September, 1858, between Joseph H. Colton, of the one part, and Juan Oudarza and Juan Mariano Mujia, of the other part, for the engraving and publishing of ten thousand maps of Bolivia, for the sum of \$25,000 in gold; in view, also, of the decree of March 8, 1858, authorizing the making of the said contract; also the laws of August 12, 1861, and October 27, 1864, which order payment of the sum due the claimant; also the financial law of the republic for the year 1865, which recognizes the debt, including interest, at the rate of 6 per cent. per annum, and difference of exchange, in the sum-total, at that time, of thirty-eight thousand dollars, it is hereby acknowledged and declared that the claim now made by Joseph H. Colton, through his attorney, Hinton Rowan Helper, is just and entitled to preference in payment. In virtue whereof the government of Bo-

livia, desiring to maintain the national credit, recognizes as now due the claimant, by way of principal, interest, and difference in exchange, the full sum of fifty-one thousand nine hundred and eighty-five dollars in Bolivian currency, or, as otherwise expressible, the sum of forty-one thousand five hundred and eighty-eight dollars and fifty-four cents in gold, to be paid religiously out of the first funds that are obtained by the loan authorized by the congress of 1871.

Take notice of this, and pass it to the director-general of accounts for the registry of the sum of forty-one thousand five hundred and eighty-eight dollars and fifty-four cents in gold, (\$11,588.54 in gold,) to be paid to Joseph H. Colton.

Sign-manual of his Excellency,

PRESIDENT MORALES.

By order of his Excellency :

GARCIA,

Secretary of the Treasury.

On the 1st of June, 1872, the Bolivian secretary for foreign affairs addressed to Mr. Markbreit, the United States minister resident at La Paz, a letter, of which the following is a copy :

DEPARTMENT OF GOVERNMENT AND FOREIGN AFFAIRS,
La Paz, Bolivia, June 1, 1872.

SIR: With your pleasing communication of yesterday I have received Mr. Colton's letter to you, from New York, in which he expresses his thanks to the national government for the decree of the first of last February, which ordered payment for the amount due him for ten thousand maps of this republic, asking at the same time payment by draft in his favor against Messrs. Lamb, Wauklin & Co., negotiators of the Bolivian loan in London.

So soon as we shall have received a full statement in regard to the said loan, the draft asked for will be given, as the national government is interested that payment of Mr. Colton's claim be made with preference, as soon as possible.

With this motive, I have the honor to subscribe myself, your most attentive and faithful servant,

CASIMIRO CORRAL.

HON. LEOPOLD MARKBREIT.

United States Minister Resident.

Again, on the 17th of October, 1873, the same official addressed to Mr. Markbreit another letter, of which the following is a copy :

LA PAZ, BOLIVIA, *October 17, 1873.*

DISTINGUISHED AND ESTEEMED FRIEND: At this very moment, I have received your valued letter of to-day, in which you acknowledge receipt of communications from Mr. Joseph H. Colton.

I am very sorry that the gentleman intends to present a memorial to the Congress of the United States.

Be you persuaded and assured that the government of Bolivia knows how to regard its obligations touching this just and legal claim, after having acknowledged the debt, and pledged its honor to pay it with preference. Consequently, the time is not distant when the sum of the indebtedness can be raised, and for this reason I do not think it necessary that Mr. Colton should resort to the extreme measures which he seems to contemplate.

Having thus answered your esteemed favor of to-day, I have the pleasure to subscribe myself, your attentive friend and faithful servant,

C. CORRAL.

MR. LEOPOLD MARKBREIT, &c.

All these assurances leave no room to doubt that it is the solemn duty of the Bolivian government to make present payment of the sum promised to Mr. Colton, with all arrears of interest thereon. There is as little doubt of the ability of the republic to make such payment. The republic of Bolivia embraces a territory equal to 473,300 square miles. It is more than one-fifth the extent of the United States, excluding Alaska. Its white population is stated at 1,742,352; considerably more than the population of Massachusetts. Its public debt is but £3,200,000. Several of the States of this Union owe more than twice as much as Bolivia.

The annual revenues of Bolivia are stated at £1,500,000. Two and one-fourth years of its revenue are equal to the payment of its debt. No other American state could extinguish its debt with its revenues in so short a period. Switzerland, Sweden, and Prussia are the only European states which could liquidate by the same means in the same time.

But of the Bolivian debt, £1,500,000, nearly one-half of the whole, is of a domestic character. The balance, £1,700,000, consists of a loan, negotiated in the year 1872 through the agency of the Bolivian Steamship Company, and in aid of a railway around the Falls of the Madeira. If that road shall be constructed, this portion of the Bolivian debt will make the republic richer instead of poorer; for it will give Bolivian products access to the navigable waters of the Madeira River, and thus furnish them with an outlet through the Amazon upon the Atlantic markets. There is, therefore, no reason for doubting that, with good faith in the administration of its resources, Bolivia might promptly meet every pecuniary obligation resting upon it.

Since the obligation of Bolivia to pay Mr. Colton's claim, and its ability to pay are manifest, the only questions remaining for consideration are whether this Government is called upon to take any steps to influence payment, and if any such steps, what?

The committee entertain no doubt that whenever a foreign government clearly owes an obligation to a citizen of the United States, this Government should notice the obligation, and should not hesitate to assert it. So much, it is apprehended, the Government may do in every such case. To what extent the Government shall go in enforcing such obligations is a different question, and a question which probably cannot be settled by the adoption of any rule suitable for universal application.

The different countries of North and South America are now indebted in the sum of £751,241,197. European countries owe in the aggregate the sum of £3,153,880,865. The question whether that immense mass of indebtedness *must* be paid, or may be repudiated at the pleasure of the several governments owing the debts, is one of great, if not of paramount, importance to all nations. This Government is one of those most heavily indebted, and may therefore mark its sense of the sanctity of the obligation resting on itself by intervening to urge the payment of the inconsiderable sum due by Bolivia to one of our own citizens. The committee do not permit themselves to doubt that Bolivia will promptly comply with the respectful request of this Government that the long-deferred claim of Mr. Colton be liquidated. Should this just expectation not be realized, it may be worth while for the Government then to consider whether we can afford longer to maintain a diplomatic representative at the capital of that republic. The United States first sent a minister to Bolivia in 1848. That mission is maintained at an annual cost of \$7,500. We have no direct trade with that republic. Since 1862, when we commenced the annual publication of our diplomatic correspondence, only six letters have been received from our representatives in Bolivia which have been thought worthy of publication.

The committee, therefore, report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1875.—Ordered to be printed.

Mr. KELLY submitted the following

R E P O R T :

[To accompany bill S. 995.]

The Committee on Military Affairs, to whom was referred the bill (S. 995) for the construction of a military wagon-road from Sidney, Nebr., to the posts at the Red Cloud and Spotted-Tail agencies, having had the same under consideration, report as follows :

It appears that the old route from Cheyenne, on the Union Pacific Railroad, to the Red Cloud and Spotted-Tail agencies, is two hundred and twenty miles in length ; while, by the new one from Sidney to the same agencies, it is only one hundred and twenty-five miles, a saving, in distance, of ninety-five miles. There exists, however, a serious difficulty on the new road in crossing the streams, which can only be obviated by the construction of bridges over them, particularly over the North Platte and the Niobrara. The letter of General E. O. C. Ord, commanding general of the Department of the Platte, to Senator Hitchcock, dated January 4, 1875, hereto annexed, shows the importance of having bridges built over these rivers and over other streams on the way.

For the reasons set forth in that letter, the committee recommend the passage of the bill.

HEADQUARTERS DEPARTMENT OF THE PLATTE,
Omaha, Nebr., December 19, 1874.

DEAR SIR : Your favor of the 15th instant, inclosing a bill for the construction of a wagon-road from the Union Pacific Railroad, at Sidney, to the Red Cloud and Spotted-Tail agencies, with the necessary bridges, is just received. I caused this route to be surveyed and measured by an officer last summer, and now all supplies, carried by contract, for the troops stationed at those agencies, are sent that way, which reduces the distances from the railroad to Red Cloud to one hundred and twenty-five (125) miles.

I have been informed recently that the Indian Department now pays for transporting its supplies for the agencies, via Cheyenne, at the rate of — cents per mile, over a route of more than two hundred and twenty (220) miles.

The only serious difficulty encountered on the new road is the crossing of the streams, at least three of which will require bridges, to prevent delay at all times, and, in time of high water, to enable teams to cross at all. One of these bridges will be over the North Platte, where it is more than half a mile wide. In my annual report, I called attention to the importance of a bridge at this point.

Bearing in mind the long bridge over the Platte, and the bridge over the Niobrara, also a considerable stream, I do not think one hundred thousand dollars too large an appropriation.

Red Cloud and other prominent chiefs have expressed themselves strongly in favor

of having this road opened and their supplies sent that way instead of by the long round-about, via either Cheyenne or the Missouri River. The opening of the road will tap a valuable timber-region on the Niobrara, and will facilitate the extinguishment of the Indian title to that portion of Nebraska north of the Platte.

The report of the officer who surveyed the road, with my remarks thereon, was forwarded to the Secretary of War, and a copy may have been sent to the Indian Department, as it contained matters of interest to that Department. If you desire it, I can send you a copy of the report referred to.

I am, sir, respectfully, your obedient servant,

E. O. C. ORD,

Brigadier-General, Commanding.

Hon. P. W. HITCHCOCK,

U. S. Senator from Nebraska, Washington, D. C.

(Through the Secretary of War.)

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IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1875.—Ordered to be printed.

Mr. GOLDTHWAITE, submitted the following

REPORT:

The petitioner, James L. Baldwin, had been, for the four years last before the filing of his petition, a distiller in Logansport, Ind., his distillery being situated on the north bank of Eel River, and run by its waters. Its capacity is 148.09 bushels of grain per day, making, when in full operation, about 518 gallons of spirits; ordinarily about 13,476 gallons per month, equal, at 40 gallons a barrel, to 331 barrels. On the same river, a short distance above the distillery, are the Forrest Mills, merchant flour-mills, owned and run by other persons; and whenever the water is so low as to furnish only a sufficiency to run these mills, the distillery is compelled to suspend its operations. This was the case during the months of June and July, 1872, in which, according to the statement of one of the witnesses, the water was lower than it had been for the last forty years; and the consequence was, that during the greater part of these months the Forrest Mills required all the water, and it was only occasionally during that time that there was sufficient left to run the distillery. The consequence was, that during the month of June, 1872, instead of making 331 barrels, he made but $267\frac{2}{5}$, and in the month of July, only $171\frac{3}{5}$ barrels, and was charged and assessed by the assessor of the district as follows:

For the month of June, 1872:

Per diem tax of \$14 per day, for 25 days	\$350 00
Tax of \$4 per barrel on $267\frac{2}{5}$ barrels of spirits	1,068 20
Making the sum of	1,418 20

For the month of July, 1872, as follows:

Per diem tax, \$14 per day, for 25 days	\$360 00
Tax \$4 per barrel on $171\frac{3}{5}$ barrels.....	686 50
	1,046 50

The aggregate for the two months being..... 2,464 70

And these assessments were in addition to the tax of 50 cents a gallon on all the spirits made and sold by or for him during said months of June and July, 1872.

Upon these facts, and the additional one that during the time the petitioner has been engaged in the business of distilling he has paid the Government from six to eight thousand dollars a month for taxes on spirits made by him, he asks that the taxes he paid during the months of June and July, 1872, be refunded. The committee, however,

can find no good reason for refunding the taxes to the petitioner, or for any other relief. His own statement shows that before he embarked in the business he must have known that the water which ran his distillery was subject to be diverted for the use of the Forrest Mills; that all rivers would fall and all machinery get out of order. Embarking in the business under such circumstances, the committee can find no ground for substituting the Government in the place of the petitioner and imposing on it the losses which were but incidents to the business in which he was engaged. The precedent would be a dangerous one, as it might extend to every trade, profession, and business which was subject to taxation, and which proved a loss rather than a gain to the party engaged in it.

Entertaining these views, your committee ask leave to be discharged from the further consideration of the memorial.



IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1875.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT :

[To accompany bill. H. R. 3477.]

The Committee on Military Affairs having under consideration H. R. bill 3477, for the relief of Nelson Tiffany, submit the following report :

We find that Nelson Tiffany was enlisted in Company A, Twenty-fifth Massachusetts Volunteers, on the 16th September, 1861, and was honorably discharged on May 15, 1865. He was severely wounded on May 9, 1864, and was sent to hospital at Bermuda Hundreds, from thence to Fortress Monroe, and finally to hospital at New-Haven, Conn., from which place he received a furlough from June 17 for 30 days, which was extended to August 7, 1864, and at its expiration he reported to medical director at Boston, and by him sent to Readville, Mass., on 10th October, being directed to report back to New Haven, Conn. He being in a worn-out and broken-down condition from wounds and sickness, believed he would never recover. He returned to his home at Auburn, Mass, and then reported to the provost-marshal at Worcester, Mass., and was by him sent to Fort Independence, and there remained till his discharge on May 15, 1865. The records show that Tiffany was a faithful soldier, and he is believed now to be upon his death bed from wounds received in the war. The committee believe from all the evidence in the case, that Nelson Tiffany never intended to desert, and they recommend the passage of the accompanying bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1875.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 1147.]

The Committee on the Judiciary, to whom was referred the petition of Courtland Parker, administrator of George W. Anderson, deceased, asking from Congress re-imbursement of the proceeds of the sale of certain mining-stock, said sale having been made under certain decrees of the United States district court for the southern district of New York, submit the following report :

The facts as we find them are briefly these :

George W. Anderson was a life-long resident of Savannah, Ga. In October, 1863, he held in the Minnesota Mining Company certificates of 250 shares of stock. At the same time there was in the hands of said company the sum of \$1,000, dividends, belonging to said Anderson.

He also held, at the same time, in the Rockland Mining Company, 300 shares; in the Superior Mining Company, 200 shares. He also owned \$1,816.73 as dividends in the Steel River Mining Company.

Each of these companies was incorporated under the laws of Michigan.

Hon. E. D. Smith, United States attorney, filed in the district court of the United States for the southern district of New York two libels: one, October 20, 1863, in behalf of the United States and B. F. Mudgett, informer, against said stock, &c., in the Minnesota Mining Company; the other, December 26, 1863, in behalf of the United States and T. Pierson, informer, against said stock, &c., in the Rockland, Superior, and Steel River Mining Companies.

Said libels were founded on the acts of Congress of August 6, 1861, and July 17, 1862, and prayed the forfeiture and confiscation of said stock and dividends on the ground that said Anderson had aided the rebellion, and that said property had been used and designed to be used for such purpose.

In each of said suits a monition issued to Robert Murray, marshal of the United States for said district, commanding him to attach said stock and moneys, and to detain the same in his custody until further order of the court, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said informant.

The marshal made return in each of said suits, as follows :

In obedience to the within monition, I attached the stock and moneys therein described, and have given due notice to all persons claiming the same that this court will on a certain day proceed to the trial and condemnation thereof, should no claim be interposed for the same.

There is nothing to show upon whom this was served.

In each of these suits decrees were rendered confiscating and con-

demning said property, and the same was sold under a pretended writ of *venditioni exponas*, and the proceeds received by the clerk of said court. It was also decreed that, on production of a certified copy of the decree, the company should cancel (through its agent in New York) the certificates of stock then in possession of G. W. Anderson, and issue new ones to the clerk of said court. All of which was done. It seems that an appearance was entered for G. W. Anderson, by William Fullerton, who was counsel for the Minnesota Mining Company; but this was clearly a mistake, as the letter of Mr. Fullerton shows. George W. Anderson had no notice of the proceedings.

Amount realized from the first suit, \$21,754, disposed of as follows:

Marshal's, attorney's, and clerk's costs	\$1, 130 32
To B. F. Mudgett and others	10, 311 84
To United States	10, 311 84
	<hr/>
	21, 754 00

Amount realized from second suit, \$7,891.72, disposed of as follows:

Marshal's taxes, costs, &c.	\$1, 255 89
District attorney's costs	595 00
Clerk's costs	155 17
To Pierson, one-half net proceeds	2, 942 83
To United States	2, 942 83
	<hr/>
	7, 891 72

After peace was restored, G. W. Anderson brought suit against B. F. Mudgett, the Minnesota Mining Company, and George H. Briggs, denying the allegations of said libel, denying that he had ever been disloyal or that he had given aid, &c., to the late rebellion. Mudgett alone defended, making a general denial, but admitting that the information given by him was based on casual information. Judgment was had by Anderson against Mudgett for \$5,190.33 and interest, the amount actually received by Mudgett. The remainder of the amount belonging to Mudgett had been shared by other persons.

The court also found as conclusions of law that "the proceedings were *coram non judice*," as the Minnesota Mining Company was a foreign corporation, and as no process had been served on plaintiff.

Anderson received from Mudgett	\$5, 190 23
From Fullerton, Smith & Briggs	3, 781 34
	<hr/>
	8, 971 67

And now asks for balance, shown thus:

Proceeds of Minnesota suit	\$21, 754 00
Proceeds of Rockland suit	7, 891 72
	<hr/>
Total	29, 645 72
Less what he has received	8, 971 67
	<hr/>
Balance	20, 674 05

Or at least what the United States Treasury and officers have received, shown thus:

In first suit to the United States	\$10, 311 84
Paid to officers	1, 130 32
In second suit to United States	2, 942 83
Paid to officers	2, 006 06
	<hr/>
Total	16, 391 05
	<hr/>
	3, 136 38

To show that he was loyal and had no notice of the proceedings, we have his own affidavit, taken April 27, 1865; that of W. S. Chisholm, of Savannah, taken April 27, 1865; that of John Scudder, taken May 23, 1865; the letter of William Fullerton, dated March 3, 1865, denying that he appeared for Anderson, as was represented in said suit.

Bearing upon the question whether the seizure by the United States marshal was sufficient to give the district court jurisdiction to decree the condemnation and sale of the stocks belonging to G. W. Anderson, under the confiscation acts of Congress, we refer very briefly to the following cases :

I.—Henry Pelham vs. Rose, 9 Wallace, 103. Decided in 1869.

This case was in the Supreme Court upon certificate of division of opinion between the judges of the circuit court for district of Indiana, under the act of Congress to seize and confiscate the property of rebels, approved July 17, 1862.

Under this statute the attorney of the United States for the district of Indiana filed his libel of information against certain "credits and effects" of Henry Pelham, that is to say, one promissory note executed by Lewis Pelham to said Henry Pelham.

A writ of monition was issued commanding Rose, United States marshal, to attach the note and to detain the same in his custody, and to give usual notice to persons claiming the same.

Rose made this return :

In obedience to the within warrant, I have arrested the property within mentioned and have given notice, &c.

The district court subsequently decreed the condemnation and forfeiture of the property, directing the clerk to issue a writ of *renditioni exponas* to the marshal. The marshal returned that he had sold the note to one Lewis Pelham, who was its maker.

Henry Pelham now brought suit against Rose and his sureties for a false return to the monition. The declaration set forth that the marshal did not have the note in possession, but that it was all this time in the hands of Lewis Pelham, in the State of Kentucky.

The defendants demurred, and the following questions arose, upon which the judges were opposed in opinion :

1st. Whether, upon the facts stated in the declaration, it was material and necessary to the due and legal service of the writ of monition, therein set forth by the marshal, that he should have seized and taken into his custody and under his control the note mentioned.

2d. Whether the return to the writ, as set forth in the declaration, must be construed to mean that the marshal had actually taken into his custody and under his exclusive control the promissory note.

Mr. Justice Field delivered the opinion.

After stating that the act of July 17, 1862, contemplated the seizure of the property, and that it is made the duty of the President, by the provisions of the act, "to cause the seizure" of the property, he continues :

The seizure of the property, as thus seen, is made the foundation of the subsequent proceedings. It is essential to give jurisdiction to the court to declare a forfeiture. Now, by the seizure of a thing is meant the taking of a thing into possession; the manner of which, and whether actual or constructive, depends upon the nature of the thing seized. As applied to things capable of manual delivery, the term means caption; the physical taking into custody.

In the case at bar a visible thing capable of physical possession is the subject of the libel. It is the note of Pelham that constitutes the "res," against which the pro-

ceeding is instituted, and not a "credit" or debt which the note is supposed to represent, by defendant's counsel.

To effect its seizure as required by the act, it was therefore necessary for the marshal to take the note into his actual custody or control. The questions are answered in the affirmative.

II.—*Miller vs. United States*, 11 Wallace, 268. Decided in 1870.

The proceeding was begun originally in the district court for the eastern district of Michigan, for the condemnation and forfeiture of shares of railroad stock belonging to one Samuel Miller, of the State of Virginia.

November 24, 1863, the United States attorney directed the marshal to seize the stock, and the marshal concluded his return as follows:

I do further return that I seized said stock by serving a notice of said seizure personally upon M. L. Sykes, jr., vice-president of the Michigan Southern and Northern Indiana Railroad Company, and president of the Detroit, Monroe and Toledo Railroad Company.

This return was made on the 6th of February, 1864.

On February 27, 1864, the district attorney filed a libel of information against said stock. Process of court was then issued, directed to the marshal, commanding him "to hold the said stock, the same having been by you duly seized," until further order of court.

April 5, 1864, the marshal returned the process with the following indorsement:

I hereby certify and return that I have seized and now hold all the property described in the within writ, and now hold the same subject to the future order of said court, and have given notice by publication to all persons interested therein as required in the within writ.

There was no personal service upon Miller or any one representing him.

Decree of condemnation and sale was made as usual.

The case was brought to the Supreme Court on writ of error to the circuit court.

The first error assigned was, that there was no such seizure of the stocks as gave the court jurisdiction to condemn them as forfeited and to order their sale.

Mr. Justice Strong says this was a fatal error, if the fact was as claimed. In revenue and admiralty cases seizure is necessary to give jurisdiction over the thing. And further he says, "seizure may be either actual or constructive." In substance the decision was, that seizure of such stocks may be made by giving notice of seizure to the president or vice-president of the railroad company; and a seizure thus made by the marshal, in obedience to a warrant and monition, is sufficient to give the district court jurisdiction; and this is true without the aid of any statute of the State to this effect.

III.—*The United States vs. 1,756 shares of the capital stock of the Great Western Railroad Company of Illinois*, Blatchford, C. C. R., 231.

¶ This was a libel of information, filed in the district court of New York by the United States against 1,756 shares of the stock of a corporation created under the laws of the State of Illinois, praying its condemnation as being the property of one Le Roy M. Wiley, and as being forfeited to the United States.

The district court decreed in favor of the libelants; the proceeds to

be distributed between the United States and the informer, in equal shares. Wiley and the company appeared and put in answers, which were stricken from the file by order of the court. It appears that the company had an agent in New York, in charge of a transfer-book of their stock.

Appeal was taken to the circuit court of the United States. Justice Nelson delivered the opinion, and says:

The court below never acquired jurisdiction of the "res" by any lawful seizure of the stock in question. The property consisted of an interest in the capital stock and dividends of an incorporated company in the State of Illinois, and which, as respects the legal proceedings in the southern district of New York, is, in judgment of law, as much a foreign corporation as a corporation in London. The process of the court could not reach it. The *situs* of the property was beyond this district and out of the jurisdiction of the court. It appears the company had an agent in the city of New York in charge of a transfer-book of their stock, and who was simply authorized to receive and enter transfers of stock, and the seizure attempted and sought to be made was made through this agent.

He also states in this opinion that the property belonged to Wiley, and could be seized only in the district in which the corporation was situated. It could neither be seized in this district nor brought into it.

In view of the facts in this case and the above rulings, we think it clear that the district court in New York did not have jurisdiction to order the condemnation of decedent's property. These corporations were all foreign. There was no seizure of the property. Decedent was a non-resident of the State, and he made no appearance to the returns. Neither the corporations nor decedent were residents of the State of New York, nor were the stocks ever seized, either actually or constructively.

And we therefore conclude that petitioner is entitled to relief to the extent of the money received into the Treasury of the United States; and for this amount, and no more, we report the accompanying bill and recommend its passage.

S. Rep. 535—2

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill S. 938.]

The Committee on Pensions, to whom was referred the bill (S. 938) for the relief of Thomas G. Kingsley, submit the following report:

That the bill (S. 938) granting increase of pension to Col. Thomas G. Kingsley, ought not to pass. Colonel Kingsley was severely wounded in the service, and is now drawing a pension, at the rate of \$30 per month, on account of disability arising from the wound received while on duty. The disability is not of that character, however, to entitle him to an increase of pension under existing law. We do not feel warranted, therefore, in departing from the policy of the Government in instances of special hardship, but not of the character, however, to bring the claim within the provisions of law upon the subject of pensions, and therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 3189.]

The Committee on Pensions, to whom was referred the bill (H. R. 3189) granting a pension to Frederick Vogel, submit the following report:

That the petition of Frederick Vogel is not supported by the letter of the Adjutant-General of the Army and by such military record as is attainable in several important respects, first, as to time of service as assistant topographical engineer; second, as to any wound or injury received in the service.

The affidavit of William H. Schmitts does not state at what time Vogel came to his house in Indianapolis; nor at what time Vogel was discharged from the service.

Vogel was employed May 5, 1864, at a salary of \$100 per month, and was relieved or discharged August 15, 1864, as shown by the letter of the Adjutant-General of the Army, dated February 23, 1874, and addressed to Hon. J. M. Rusk.

The affidavit of Vogel states that his injury was received in September, 1864. If at all, he could not at that time have been in the service if the statement in the letter of the Adjutant-General be correct.

The committee feel that where a civilian was employed to operate with an army in the field upon a merely temporary service at a high salary as compared to that of a private soldier, strong corroborating proofs ought to be supplied in support of the statements of the petitioner for a pension. In this case we feel such proof is lacking, and therefore recommend that the bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 1644.]

The Committee on Pensions, to whom was referred the bill (H. R. 1644) granting a pension to Hannah E. Currie, submit the following report:

That the claim of Hannah E. Currie for a pension, on the ground of dependence upon her late son, Capt. Samuel H. Currie, of the Thirty-third Regiment Ohio Volunteers, is not sustained by the proofs presented to the committee. All the facts to warrant a pension are abundantly proven, except the material one of dependence. There is no evidence to show he ever made a contribution to the support of his mother, or that there was any occasion for his doing so, as the father was living and in measurably prosperous condition, in an established business with his son, at the time of the enlistment of the latter in the service. It is true she lost her son, and the father has since died, and that she is now possibly in indigent circumstances; but unless it be the purpose to disregard the provisions of existing law upon the subject of pensions, hard as the case may be, the committee feel constrained to report adversely, and to recommend the indefinite postponement of the House bill No. 1644.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Ann Toliver, mother of David Toliver, late a private of the One hundred and nineteenth Regiment United States Colored Infantry, praying to be allowed a pension, submit the following report:

The evidence shows the enlistment, service, and death of David Toliver, and that he was the son of the petitioner, and died leaving neither widow nor child surviving him. The claim of the petitioner for a pension is based upon her alleged dependence upon this son for support. It is shown that while in the service he sent her \$10 or \$15 one time, and as death was approaching directed that \$14 of his money should be paid her, which was done.

She made application in 1870 for a pension—more than four years after her son's death—and submitted several affidavits in support of her claim. A special agent was directed by the Pension-Office to examine the case, who proceeded to examine the witnesses whose affidavits had been taken. In his report their sworn statements are made exhibits. The witnesses under his examination denied most of the facts contained in their affidavits, and denied that they had sworn as these papers represented them to have done. Their statements, made under oath before the agent, fail to make out a case of dependence, and tend strongly to show fraud in the one who drew them. This report was filed in the Pension-Office on the 10th of September last, and in November the Commissioner rejected the claim on the ground that the claimant was not dependent upon the soldier for a support.

The committee concur in this conclusion, and ask to be discharged from the further consideration of the petition.



IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3681.]

The Committee on Pensions, to whom was referred the bill (H. R. 3681) granting a pension to Wm. M. Drake, submit the following report :

The case of this soldier was pending in the Pension Bureau from October 1, 1866, until the year 1873. The papers in the case are very voluminous and frequently duplicated. Several attorneys at different times have figured in it; examining-surgeons repeatedly testified, and two boards of examining-surgeons have certified the result of their examinations.

The claim was finally rejected, and Drake in the mean time having lost his mind, the appeal to Congress is now prosecuted by Samuel S. Woodruff, his guardian.

In his first declaration, made on the 26th of September, 1866, Drake swore that on the 6th of April, 1864, he enlisted as a private in Company D, commanded by Capt. Wm. Browning, in the Eighty-second Regiment Indiana Volunteers, and was honorably discharged on July 20, 1865; and that at Resaca, in the State of Georgia, on May 15, 1864, while making a charge, he was wounded in the hip by a gunshot, taken to the field-hospital, unable to do duty, where he was confined about nine weeks; that he was afterward transferred to Company B, of the Twenty-second Regiment Indiana Volunteers, and was finally discharged with his company at Indianapolis, never having been able to do duty in the mean time in consequence of the wound received, which he claims finally produced epilepsy, thereby causing total disability.

On the 26th of June, 1869, he made another declaration, in which he states more circumstantially that he was badly wounded at the time above given by gunshot in the left hip and back, during a charge upon the rebel works; and that by reason of the wound in his back, which affects his spine, he is subject to epilepsy, which wholly disables him from performing manual labor; and that he was treated for his wounds in general field-hospital at Resaca until about the close of the war.

The Adjutant-General certifies that the records of his Office show that Drake was mustered out of service with his company on July 24, 1865, and that there was no evidence of disability May 13, 1864.

The Surgeon-General reports that Drake was admitted for treatment, for flesh-wound of middle right thigh, to the Third Division Fourteenth Army Corps hospital, at Kingston, Ga., May 14, 1864; final disposition not given.

The captain of the company twice certifies to the wound received in the battle of Resaca.

An examining-surgeon twice certifies, once in 1866 and again in 1869, to the gunshot wound in the left hip, and that the disability was total and permanent. He likewise certifies to a shell-wound in the back, and claims that the wounds produced epilepsy.

The board of examining-surgeons at Indianapolis, on the 8th of February, 1873, certify that the last true rib on the right side of Drake had been fractured by an accident in building breast-works; that there was some distortion of the rib, with slight lung irritation, amounting to one-fourth disability; that the applicant had *paralysis agitans*, dull mental condition, considerable debility, and undoubtedly epilepsy, the attacks occurring as often as once a week; that they could not tell what the cause of these attacks was, but they do not think that any of his wounds could have caused epilepsy, although there had evidently been a severe shock to his nervous system.

They pronounce his disability for epilepsy three-fourths, and add that the soldier informed them that there was a mistake in his application; that he was not wounded in the hip at all; and they say there was no evidence of wound in the thigh.

In a later certificate the same board certify that there was no wound of the hip whatever in Drake's case, and that his guardian says his application should have been injury to right side, fracturing last true rib, and epilepsy. After a careful examination they say they are of the opinion that his epilepsy was not caused by a wound of the left hip; but that they were convinced that Drake had *paralysis agitans*, and epilepsy, which he contracted during the service, and that he should be pensioned therefor. They add that their information had been obtained from Woodruff, the guardian.

Dr. Anorine testifies that he knew Drake seven or eight years before his enlistment; that he never knew him to have epilepsy or any falling sickness; and that, to his knowledge, he was a sound, able-bodied man, free from any disability whatever when he entered the service, and his belief is that his disability originated while in the service.

Dr. Perry testifies that he attended Drake in August, 1865, for epilepsy, and learned that he had received a shell-wound in the back and a gunshot-wound in the left hip, which were then closed; that the patient recovered and remained well for about four months, when his spasms returned more frequently, and have become incurable. He expresses the belief that Drake's disability was caused by injuries in the service; that the lower part of his spinal column was shrunk from abscess; that after inquiry he was satisfied that no epilepsy existed before his enlistment.

In another affidavit this same witness testifies that he attributed Drake's epilepsy to irritation of the spinal nerves, and that it originated either from shock, pelvic injury, or exposure; that he then had general anæmia, with epilepsy, was partially insane with partial loss of memory; that so far as his recollection would permit he was a truthful man, and free from any vicious habits. Both of his parents were free from epilepsy, scrofula, or phthisis.

Without recapitulating the evidence, we may add that it is entirely satisfactory upon the point that Drake was a healthy, vigorous man, apparently free from epilepsy or any other disease, at the time he entered the service.

The evidence is equally clear that he is now a total wreck in mind and body.

His claim for an invalid pension was rejected by the Commissioner on medical evidence showing that the disease, epilepsy, was not the result of wounds, as alleged by the claimant in his declaration. "A claim for epilepsy," says the Commissioner, "from any other cause would be barred from further prosecution under the acts of July 4, 1864, and March 3, 1873, as the records of the hospitals named by the claimant as those in which treatment was received show treatment for wounds only, and there is no other record-evidence in the case of a disease or cause of a disease."

The committee cannot resist the conclusion that the opinion of the board of examining-surgeons is to be respected when they say, "but we are convinced that this man has *paralysis agitans* and epilepsy, which he contracted during the service, and should be pensioned therefor." We add that this board is composed of three of the most eminent medical practitioners of Indianapolis. The committee therefore recommend the passage of the bill without amendment.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 1438.]

The Committee on Pensions, to whom was referred the bill (H. R. 1438) granting a pension to Emily Phillips, widow of Martin Phillips, submit the following report:

Phillips was a corporal of Company H, Fifty-sixth Ohio Volunteer Infantry, and died of consumption on the 30th day of December, 1870. He applied for a pension, and on his death the application was renewed by his widow, and the Pension-Office rejected the claim on the ground that the evidence indicated that the disease originated after discharge of the soldier from the service.

The Commissioner, in his letter to the Secretary of the Interior, says:

I regard the rejection fully warranted by the evidence as set forth, with the indorsement of the medical referee, on the brief.

The Secretary of the Interior, in his letter of November 17, 1873, says:

The claim was brought before this Department on appeal some time ago, and, on the 31st ultimo, the decision of the Commissioner of Pensions, rejecting the claim, was affirmed. This conclusion was reached after a careful review of all the evidence in the case, and is believed to be in accordance therewith. If additional evidence can be procured going to show that the disease of which the soldier died was contracted while he was in the service, you are at liberty to file the same in the Pension-Office, with a view to having the claim re-opened, but, in its present condition, it must stand rejected.

The following is the brief of the proofs as made up at the Pension-Office:

The Adjutant-General reports that, on the muster-roll of the company for the months of September and October, 1864, Phillips was reported absent, sick—nature of sickness not stated. On an individual muster-out-roll, dated Columbus, Ohio, October 10, 1864, he was reported mustered out by reason of expiration of service.

The Surgeon-General, April 1, 1872, reports:

Was admitted to general hospital, Jefferson Barracks, Missouri, July 20, 1863, for treatment—no diagnosis—and was transferred August 13 or 17, 1863. Entered Good Samaritan general hospital, Saint Louis, Mo., August 11, 1863, with granular ophthalmia, and was transferred October 12, 1863.

Entered general hospital, Jefferson Barracks, October 13, 1863, with chronic ophthalmia, and was transferred June 12, 1864. Entered Marine general hospital, Saint Louis, Mo., June 11, 1864, with chronic granular

conjunctivitis, and was returned to duty October 6, 1864. No certificate of disability on file.

Captain of company, in affidavit filed May 7, 1873, states that he fully believes that the soldier contracted the disease of which he died while in the service and in the line of his duty, and that the deponent has read the affidavits of affiants, Hanes and Brady, and believes them true and correct.

A. S. Hanes, in affidavit filed May 7, 1873, testifies that he was well acquainted with Phillips, and that he was an able-bodied man when he enlisted, and that while the said soldier was at Helena, Ark., in August, 1862, he became afflicted with sore eyes, chronic diarrhœa, and general debility, caused by bad water and exposure, Helena being a sickly place; that he became further disabled while marching back of Vicksburgh, Miss., and at the siege of Vicksburgh he became wholly disabled to do duty; and his breast and lungs being affected, after the surrender he was sent to hospital and did not return to the company again.

William S. Brady, in affidavit filed May 7, 1873, states that he was first sergeant in Company H, Fifty-sixth Ohio Volunteers, and having carefully read the foregoing statement of Hanes, knows that the same is true and correct.

Dr. William M. Watts, August 21, 1871, testifies that he examined Phillips when he entered the service in the year 1861, and he was then an able-bodied man. He also examined him soon after his discharge, in November, 1864, and found him afflicted with chronic hepatitis and general debility. Phillips grew worse; and on the 12th day of August, 1865, he made an examination, and found him in the same condition as above stated, and getting worse, and gradually running into phthisis pulmonalis, which terminated his life.

William J. McDowell, examining surgeon, on July 3, 1868, finds inflammation of cornea of both eyes. His physician says he had inflammation of the liver. He is now debilitated; and, from the statements of others, this condition of the system was contracted in the service. "Vision of the right eye," McDowell says, "is much impaired." The claimant, in the declaration, swears that the soldier died December 30, 1870, of disease of the lungs.

William M. Watts, M. D., makes three affidavits: one on the 1st of August, 1871; the others on the 6th and 27th of December, 1873. His first is contained in the foregoing abstract. In that made on the 6th of December he swears that he saw Phillips soon after his return from the service, and that he was then afflicted with disease of liver and lungs, and general debility; that he prescribed for him as his physician, but that his medicine had little effect, and he gradually grew worse until he died. In that of the 27th of December he swears, upon the soldier's return, he had consumption and general debility, which were contracted in the service and ended in his death.

Two witnesses, Sickles and Perry, not mentioned in the foregoing brief, testify to Phillips's sound condition of health when he entered the service, and to his affliction in the summer of 1862 at Helena, and to their belief that it was exposure and bad water at that place which caused his disease; that he was sent to the hospital from Vicksburgh about July 5, 1863, and that he was never able for duty afterward. They likewise testify that he was a man of moral character; that his disease was not aggravated by intemperance or other bad habits, and that they were soldiers in the same company with him.

His discharge-papers show that he was mustered out on October 10, 1864, by reason of expiration of term of service; and that he was then

27 years of age. It thus appears that he was mustered out only six days after his discharge from the hospital.

The witnesses all agree that Phillips was a sound, able-bodied man when he entered the service; if he contracted any bad habits while in the Army, the testimony fails to show it. The testimony is explicit, that when he left the service he was broken down in health, and gradually declined until the period of his death. Four of his companions in the service, unprofessional witnesses it is true, agree in opinion that his exposure and the malarious climate and bad water were the causes of his disease. In this they are supported by Dr. Watts, his family physician, who, while not always strictly consistent, is clearly of opinion that the seeds of the disease which carried him off were sown while in the Army.

The committee are of opinion that, upon the whole testimony, the claim of the widow for a pension is reasonably well sustained, and accordingly recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3722.]

The Committee on Pensions, to whom was referred the bill (H. R. 3722) granting a pension to John Fink, submit the following report:

Fink was a private in Company G, First Regiment Potomac Home Brigade, Maryland Volunteers, and lost his leg while in the service in the manner following:

He was returning from camp from off picket-duty about the latter part of August, 1862, when he attempted to get aboard a passing train of cars near Monocacy Junction, (Baltimore and Ohio Railroad,) and, in the attempt, missed his hold and fell under the cars, which passed over his right leg, causing amputation. He was sent to the hospital at Frederick, Md., and while there the rebels made a raid, and he was made a prisoner, paroled, and left in the hospital, where he remained until December, 1862, when he was taken home, and there remained until the expiration of his term of service. This statement of the claimant is confirmed by his officers. His claim for a pension was rejected at the Pension-Office on July 13, 1870, because it appeared from his own allegations that the disability for which he claimed a pension was not contracted in line of duty.

On that particular point two of the officers of the regiment swear that it was customary with the soldiers to get aboard a passing train in the way Fink did.

The committee are of opinion, after examining the evidence in the case, that it is not clear that the soldier was not in the line of his duty at the time he met his accident, and therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT :

The Committee on Pensions, to whom was referred the petition of Rosa Ward, of Moretown, Vt., praying to be allowed a pension, submit the following report:

The petitioner was the mother of Andrew Ward, who was a private in the First Battery of Light Artillery, Vermont Volunteers. He enlisted on the 18th day of January, 1862, was mustered into rank on the 18th day of February following, and was killed in battle at Port Hudson on the 26th of May, 1863. When he enlisted he was 18 years of age, and lived with his parents on a rough, hill farm, and assisted his father in carrying it on.

On the 3d day of February, 1872, the mother made her declaration for a pension, on the score of dependence on the son's labor for support. In that she swears that she was then 66 years of age, while her husband, William Ward, was 75, and unable to support her; that her son left neither widow nor child, and that there were surviving, at the death of her son, his two brothers, George and Thomas, of the ages respectively of seven and eleven years.

There is nothing in the evidence to show that these sons are not still living, and, of course, their present ages would be about ten and fourteen years. If the mother is correct in the statement of their ages, George must have been born when she was 59 years old, and Thomas when she was 54.

The Commissioner of Pensions in his letter to the committee says: "The proof on file shows that the husband of the claimant was able, during the life-time of the soldier, to provide a support for himself and family, hence the claim is not deemed admissible under the general pension laws."

An effort was made to show that the father of the soldier was disabled, by permanent lameness and age, from the support of his family. The Pension-Office directed, therefore, an examination by a surgeon of his condition, which was made in February, 1873, the result of which is not favorable to the allowance of the claim. His conclusion is as follows: "That there has been any particular change in his (the father's) health, except from the necessary decline from increasing age, for the last twelve years, I do not discover from him. That he is disabled now more than the average of men is not true." He describes him, at the period of his examination, as 72 or 73, shortish, fat, and burly, weighing 196 pounds; strong voice, and slightly wheezing on exertion.

The farm on which the parents have lived many years is valued at \$800 or \$900. At first it was mortgaged for nearly its worth, but the bounty-money received from the son had reduced it to about \$450. The stock on the place is valued at \$200. Nothing is said of the value of the farming tools and household property.

The witnesses, whose affidavits all appear to have been drawn by the same attorney, discover remarkable coincidence, both in the valuation of the property and the value of the son's services to his parents before enlisting. They all agree that these were worth \$10 per month for the years 1860 and 1861, while for the year 1859 they are placed at \$6. Two swear that, notwithstanding the value of the son's labor, the income from the farm in 1861 was not worth exceeding \$60. Two others swear that, before the son's enlistment and death, the income from the father's wages would not exceed \$12 a month, and that it has been decreasing since. While his son was in the Army, he received from the State \$7 per month, on account of the son's service, which was paid him by one of the selectmen of the town.

It will be seen that Mrs. Ward delayed applying for a pension nearly nine years after her son's death. Do the facts as given entitle her equitably to one now?

Both the letter and spirit of the law require that the claim on the score of dependence should exist at the date of the son's death. The mother must have been dependent upon him *then* for support, in whole or in part. She must have had, at that point of time, no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of her son. Now, how stands the case on this question? She had then a farm—or at least her husband had—true, rough and hilly, but worth \$900. There was besides personal property in the family worth \$200. Her husband's service on the farm, reduced to the grade of a hired man's labor, was worth \$12 per month the year round. There is nothing in her own showing, or the testimony, to rebut the presumption that she was able-bodied, rugged, and capable of making her way in the world. Indeed the prodigies of her maternity indicate a wonderful constitution and high order of strength and vigor. The testimony in support of the claim is all *ex parte*, and the witnesses of her own selection. It is not to be doubted that such only were called upon as would make out a plausible case. We make one exception—the examining-surgeon before whom the father was compelled to go to establish his disability, past and present—and we must say this witness deals a very damaging blow. Looking at the whole case, the committee feel no hesitation in saying that it was not this sort of dependence which Congress intended to relieve. They therefore ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 900.]

The Committee on Pensions, to whom was referred the bill (S. 900) granting a pension to the widow and minor children of Ira Wilkins, submit the following report:

The bill states that Ira Wilkins was a private in Company G, Eleventh Regiment Veteran Invalid Corps, and directs the payment of a pension to his widow and minor children from the 2d day of August, 1864.

It appears from a letter of the Commissioner of Pensions, dated June 9, 1874, that a claim for pension was made in this case (No. 66,402) at the Pension-Office, and was rejected October 23, 1872, under the provisions of section 6, act of July 4, 1864, and was re-opened April 1, 1873, under section 24, act of March 3, 1873, and the Commissioner says: "There appears no reason why it (the claim) cannot be allowed under the general law. Evidence is required to show the cause of the soldier's death."

No evidence has been filed in the case.

While the claim is thus pending in the Pension Bureau, the appropriate place for its consideration, and the claimant is allowed full opportunity to supply any defect in the evidence, the committee feel unwilling to assume jurisdiction. It will be time enough for the widow to appeal to Congress in behalf of herself and minor children when her application shall have been denied in the forum where it is now pending.

The committee therefore recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

MR. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 2352.]

The Committee on Pensions, to whom was referred the bill (H. R. 2352) granting a pension to Louis Hinely, respectfully report:

The evidence shows that Louis Hinely enlisted as a private in Company E, Twelfth Regiment of Pennsylvania Cavalry Volunteers, on the 11th day of November, 1861, to serve three years, and was discharged on the 30th day of December, 1864. Said Hinely testifies that, on or about July 8, 1864, while in the line of his duty, and while engaged with his company in a skirmish with the enemy, near Frederick City, Md., his horse was shot in the head, causing said horse to rear and fall on him in such a manner as to bruise his left side severely, for which injury he was removed to New Berlin, Md., where he remained about four weeks exposed to the weather in open field without any shelter, and in consequence of said injury, and from exposure and want of proper care and treatment, he contracted rheumatism in his left side, arm, and leg, with partial loss of sight in left eye and hearing in left ear, for which he was treated in hospital at Camp Complaisant, Md.; and that said injury still exists to such a degree that he is entirely incapacitated from performing manual labor.

The Pension-Office has rejected said soldier's application for a pension for the reason that it had not been prosecuted to a successful issue within five years from date of filing, and, for the further reason that as the Adjutant-General refused to change his record so as to show that said soldier was injured as alleged, said case was barred from further prosecution by section 24, act of March 3, 1873.

Henry Scheid and Conrad Holbein, soldiers in said Hinely's company and regiment, testify that they were present when said Hinely received his injury from his horse falling on him, near Frederick City, Md., in July, 1864, and that said Hinely, from exposure to the weather, without a tent, at New Berlin, Md., contracted rheumatism, which settled in his side and injured his eye-sight.

John Euper, first sergeant of said company and regiment, testifies that said Hinely, while in the line of his duty near Fredericktown, Md., about July 8, 1864, had his horse shot by the rebels, causing him to raise up and fall down on said Hinely, bruising his left side, and that said Hinely was exposed to the weather on his way to New Berlin, Md., and contracted rheumatism in the left side, and loss of eye-sight.

D. A. Irwin certifies that he was captain of said Company E, Twelfth Regiment Pennsylvania Cavalry Volunteers, and that said Hinely was

injured while in the line of duty at the time, place, and in the way and manner as above stated.

J. D. Schoales, M. D., late surgeon of said Twelfth Regiment, testifies that said Lewis Hinely, while in the line of his duty as a private Company E, of said Twelfth Regiment, had his horse fall on him, bruising him and injuring him severely in his left side, and, from exposure, he contracted chronic rheumatism, and was sent to the hospital in August, 1864.

It is shown by the testimony that said Hinely was a stout and healthy man when he enlisted, that he was injured and diseased as above stated at the time he was discharged, and that his said injury and disease has remained continuous and still exists. Medical evidence is also furnished showing that said Hinely's injury and disease are permanent.

The committee, therefore, recommend the passage of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3697.]

The Committee on Pensions, to whom was referred the bill (H. R. 3697) granting a pension to Belinda M. Craig, as the widow of William T. Craig, submit the following report:

The evidence in this case shows that Belinda M. Craig, the applicant for a pension, is the widow of Wm. T. Craig. The Pension-Office has rejected this claim, on the ground that the evidence on file is not sufficient to show that the soldier was dead, or, if dead, that he died of disease contracted in the United States service.

A report from the Adjutant-General's Office states that the records of the Provost-Marshal-General show that said soldier was drafted and mustered into service November 16, 1864, received at draft rendezvous, Pittsburgh, Pa., November 29, 1864, and was forwarded for the Ninety-eighth Pennsylvania Volunteers April 13, 1865; that there is no muster-out roll of him, and no evidence that he ever joined said regiment.

The question to be considered in this case is, whether said soldier is dead; and, if so, did he die while in the service and in the line of his duty. Belinda M. Craig testifies that she believes that her husband, said soldier, died at or near City Point, Va., about April 18, 1865; that he contracted disease at camp, and was unwell when he left camp to go to City Point. John F. Read and David S. Taylor testify that they had been for fifteen years with said William T. Craig, and that he was a private in Company A, Ninety-eighth Regiment Pennsylvania Volunteers; that said soldier was sound and healthy when he was drafted into the United States service, on or about the 11th day of November, 1864; that said soldier was sent to camp at Braddock's Fields, Pa., five days after he was drafted, and that he was taken sick one week after he had been sent to said camp, and that during his sickness he received a furlough of seventy days; that after his furlough had expired he returned to camp, still suffering with the same disease; that about four days after he returned to camp, he was sent to the front at Petersburg, Va., although he was still sick and weak, and that the last they heard about said soldier was a report that he was last seen on the march, too weak to march; that he was put on a horse, but was too feeble to stay on; that he fell to the ground, and his horse tramped on him, so that he died then and there, and that no tidings have ever been heard of him since. They further certify to the good character and moral worth of said soldier.

William Henderson, M. D., testifies that he was said soldier's family physician, and that when said soldier was drafted into the United States service, on or about the 11th day of November, 1864, he was then enjoying his usual good health; that he was, about five days after, sent to the camp at Braddock's Fields, Pa., and that said soldier, while there, took a fever, then prevalent in said camp, and that at the request of one of the officers of said camp, and the family of said soldier, he called at said camp about the beginning of December, 1864, to see said soldier, and that he found him in bed suffering with typhoid fever; that he again saw him after he returned from his seventy days' furlough, in April, 1865, when said soldier called at his office, very feeble, his legs and feet swollen so much that he was unfit to travel, and it was but a few days thereafter that he was ordered and went to join the Army of the Potomac; that the disability and feebleness of said soldier was directly the result of the fever contracted at said camp; that he then expressed the opinion, which he has now no reason to change, that said soldier was liable, from his condition, to drop down dead at any moment; that said soldier was then entirely unfit to return to the camp, and much less to be sent to the front at Petersburg. The Second Auditor of the Treasury Department has paid the sum of \$79.46 to Belinda M. Craig, as the widow of William T. Craig, late private, Company A, Ninety-eighth Regiment Pennsylvania Volunteers, for services from the 16th day of November, 1864, to the 14th day of April, 1865.

The evidence appears convincing upon all the questions involved in this case, and the committee therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3192.]

The Committee on Pensions, to whom was referred the bill (H. R. 3192) granting a pension to the minor children of Jackson A. Brewer, submit the following report:

The evidence in the case shows that Jackson A. Brewer, usually called Austin Brewer, and by that name enlisted for three years as a private in Company A, Seventieth Regiment of Ohio Infantry Volunteers at Camp Dennison, in that State, died at his home, near the encampment, on the 24th of March, 1864. The evidence also shows that the widow of said Brewer has remarried, and that the wards of Thomas B. Gaddis, the guardian, making application for pension, are the minor children of said soldier. Said guardian testifies that the captain of said soldier was killed in battle, and that the other officers of said soldier's company are dead or gone off to parts unknown, so that he is not able to get their affidavits.

It is proven that he died from mortification and erysipelas, caused by the freezing of his feet on or about the 24th day of March, 1864. The only question in the case is, whether the cause of the death of said soldier originated while he was in the line of his duty; and, for the want of this proof, the Commissioner of Pensions has rejected his case. The records of the War Department show that said soldier was on furlough from February 29 to March 8, 1864, and that he died on or about March 25, 1864, at home, in Highland County, Ohio, because of fever and erysipelas, brought on by exposure while in a state of delirium. William Ruse, Isaac Morrow, Samuel Ruse, and W. D. Pitzer testify that the soldier was a man of good and temperate habits, and was never, to their knowledge, addicted to the use of intoxicating drinks, and that they never heard of his having been addicted to the use of the same either before or after he entered the Army; that they always understood that said soldier's death was the result of frozen feet, and of disease and general debility, contracted while in the service. Simon C. Chase, M. D., testifies that he attended said soldier in his last illness; that he found both of his feet frozen so that mortification extended to his body, and occasioned his death March 24, 1864; that his feet were frozen while at Camp Dennison, or in vicinity of said camp, and he was conveyed to his residence, which was not far from said camp; that he was called upon to attend him because he was nearer to him than the surgeon at the hospital; that he was frozen about one week prior to his death; and that his death was occasioned solely and entirely from mortification, which resulted from frozen feet, suffered while in the service

and subject to and under the orders of the officers of his regiment; that said soldier was a stout and healthy man when he enlisted, and that he had never at any time understood that said soldier had been subject to fits, or that he had ever had a single fit, spasm, or convulsion of any kind.

Said Dr. Chase, in reply to a letter from the Pension-Office, further says that, as respects his being intoxicated on the night that his feet were frozen, it would seem to be highly improbable, as the soldier had no opportunity to get whisky, even if he were in the habit of drinking; that he made this statement from personal knowledge in the premises, as he was personally acquainted with the officers at Camp Dennison, and believes that intoxicating drinks were prohibited.

The committee have given this case full consideration, and are unable to conclude that the evidence sustains the theory that Brewer died of disease contracted in the line of his duty, and they therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3273.]

The Committee on Pensions, to whom was referred the bill (H. R. 3273) granting a pension to Rachel W. Phillips, widow of Gilbert Phillips, submit the following report :

The testimony in this case shows that Gilbert Phillips was mustered into the United States service as a private in Company D, Thirty-eighth Regiment Wisconsin Volunteers, April 15, 1864, for three years, and transferred to the Veteran Reserve Corps May 16, 1865, and discharged the United States service August 5, 1865, and died October 6, 1865, of camp-fever, alleged to have been contracted previous to his discharge.

This claim is rejected by the Pension-Office because it is not satisfactorily proven that the death of the soldier was the result of disease contracted by him while in service. Benjamin S. Kerr, late first lieutenant commanding Company D, Thirty-eighth Regiment Wisconsin Volunteers, testifies that said soldier was a sound and healthy man when he enlisted, and until about the 1st of June, 1864, when he became sick with diarrhea and flux, but continued on duty until the 11th of June, 1864, at which time the regiment made a forced march from White-House Landing to Cold Harbor, Va., and when about half-way between said places said Phillips became unable to go farther and "fell out;" that said Phillips was a good and faithful soldier, and contracted said diarrhea and flux while in the line of duty; that said soldier never rejoined said regiment, but was transferred to the Veteran Reserve Corps. The records of the Surgeon-General's Office show that said soldier was in hospital or on furlough from June, 1864, to May 16, 1865, the date of his transfer to the Veteran Reserve Corps. Dr. Covert testifies that he was called on to prescribe for said soldier on the 25th day of August, 1865; that he found him suffering with general physical prostration and debility with premonitory symptoms of fever; that he treated him for debility and incipient fever, which became daily more marked and determined in character, developing into regular camp-fever, of which he died October 6, 1865.

While testimony is not entirely clear and satisfactory, yet the committee consider it established by a preponderance of evidence that the soldier's death resulted from disease contracted in the service and in the line of duty, and they therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 2400.]

The Committee on Pensions, to whom was referred the bill (H. R. 2400) granting a pension to William White, submit the following report:

William White, an applicant for a pension, in his testimony states that in August, 1862, he enlisted for three years in Company I, of the Fifth Regiment of Michigan Cavalry Volunteers; that he was a strong and healthy man when he enlisted and until he was taken prisoner, on or about March 2, 1864, at Stevensville, Va., and confined for three months in the Libby prison, in Richmond, and six months in Andersonville; and that, in consequence of said imprisonments, he contracted disease which in part incapacitates him from performing manual labor. Satisfactory medical evidence is not furnished showing his present condition and whether his disease has been continuous since his discharge. The records of the Pension-Office show that said White has never made application there for a pension.

The committee, therefore, recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill S. 916.]

The Committee on Pensions, to whom was referred the bill (S. 916) for the relief of Mrs. Ann Cornelia Lanman, submit the following report :

The bill directs the Secretary of the Interior to place upon the pension-roll the name of Mrs. Ann Cornelia Lanman, widow of the late Rear-Admiral Joseph Lanman, at the rate of \$50 per month, to commence on the 1st day of April, 1874, and to continue during her life, and, in case of her death, the pension to be continued until the youngest child shall have reached the age of 16 years.

The memorial of the widow shows that her husband entered the Navy as a midshipman at the age of fourteen years, and that he passed through all the intermediate grades in the service, until he attained the rank of rear-admiral, and that he died on the 13th day of March, 1874. He had been placed on the retired list about two years previous to his death, in accordance with an act of Congress, on account of his age and length of service. He had but recently returned from his last cruise in the South Atlantic, where he was in command of the squadron, with health much impaired, as is alleged, by long exposure in tropical latitudes, when in February, 1874, he received an order from the Navy Department to go to Washington to give evidence before a court-martial then sitting there. He immediately started, though scarcely able to travel, and, having performed the service required, returned home immediately and was at once confined to his bed, and never afterward was able to leave his room. It is alleged in the memorial that, as in his life-time he was wholly dependent upon his pay for the support of his family, his widow now finds herself without any adequate means of support.

It seems he left four children, two by a former marriage, and the other two born respectively December 1, 1865, and March 20, 1868.

The claim of his widow to a pension has been disallowed at the Pension-Office. It seems that her application with accompanying papers was referred by the Commissioner to the Secretary of the Interior, who rendered his decision on May 29, 1874, which is here inserted :

SIR : I have received and considered your letter of the 23d instant with accompanying papers in relation to the claim for pension of Mrs. Cornelia Lauman, widow of the late Rear-Admiral Lanman, of the United States Navy.

It appears from the papers that in reply to a letter from your office to the Secretary of the Navy, asking information respecting the services of said officer, you were informed that "Rear-Admiral Joseph Lauman was placed on the retired list on the 18th

of July, 1872," and that, "under the act of March 3, 1873, officers on the retired list could not be employed."

It further appears that said officer was ordered on the 20th of February last, by the Secretary of the Navy, to report in person to the president of the naval general court-martial then in session at the navy-yard in this city, as a witness in the case of Commander Quackenbush. He did so report, and it is sought to be shown that, while absent from his home in obeying said order, he contracted the disease of which he died on the 13th of March last.

In your letter of the 19th instant to Senator Buckingham, you conclude that Mrs. Lanman has no title to a pension, for the reason that the deceased officer "was not in the line of duty as an officer after he had been retired, and when he is alleged to have contracted the disability which caused his death."

A proviso to the act of March 3, 1873, (U.S. Statutes, vol. 17, page 547,) declares "that no officer on the retired list of the Navy shall be employed on active duty, except in time of war." The exception not being fulfilled in this case, it is apparent that the disease of which the officer died (even if it were satisfactorily established that it was contracted as alleged) was not contracted while he was in the service and in the line of his duty as an officer, and, therefore, that his widow has no claim to the benefits of the general pension laws.

You will please transmit a copy of this letter to Senator Buckingham. The papers forwarded by the Senator are herewith returned.

I am, sir, very respectfully, your obedient servant,

C. DELANO,
Secretary.

The COMMISSIONER OF PENSIONS.

The evidence of the surgeon, who was the family physician, and had known the rear-admiral for twenty years, establishes that the latter died in Norwich, Conn., of pneumonia, contracted while on a trip to Washington. He certifies that he left home "in perfect health," and when he returned the disease was fastened upon him so that he immediately took to his room and did not leave it again.

The testimony contradicts the allegation of the memorial as to the condition of the admiral's health after his return from the South Atlantic cruise, and when he was summoned to Washington.

Besides this affidavit, there is nothing in the way of evidence except the sworn application of the widow and the telegram from the Secretary of the Navy, in obedience to which the deceased went to Washington. That was an order to report in person, without delay, to the president of the naval general court-martial, then in session at the navy-yard, Washington, as a witness in the case of Commander Quackenbush, dated February 20, 1874, and across its face the paymaster at the naval station at New London indorses that there was paid mileage, from Norwich and return, \$74.20.

The law under which her husband was retired from active service requires that when any officer below the rank of vice-admiral is sixty-two years old, he shall, except as to certain officers specified, be retired by the President from active service. Whether on the active or retired list, the rear-admiral ranked with the lieutenant-general, and his pay when at sea was \$6,000; on shore duty, \$5,000; on leave or waiting orders, \$4,000. When placed on the retired list, his pay under the law was reduced 25 per cent. below his sea-pay.

Retired naval officers are borne on the Navy Register; they are entitled to wear the uniform of their respective grades, and are subject to the rules and articles for the government of the Navy, and to trial by general court-martial. They cannot be employed on active duty except in time of war, when the President may detail them for the command of squadrons and single ships, when, in his opinion, the good of the service requires it. Retired officers so detailed may be restored to the active list, if, upon the recommendation of the President, they shall receive a

vote of thanks of Congress for their services and gallantry in action against the enemy.

On this statement of the facts and the law, the committee cannot agree with the theory of this bill. The entire claim is based, as we understand it, upon the order of the Secretary of the Navy. It is supposed that this was an order which the rear-admiral was bound to obey, and that, in yielding obedience to it, he was, for the time being at least, taken from the retired and restored to the active list.

We cannot so regard it. It was in the nature of a subpoena, directed to an officer of the Government, drawing his pay as such, and the service contemplated was nothing more than giving testimony as a witness. Even for this he was paid—for he was allowed mileage in going to and returning from Washington—such a sum as seems to us must have reimbursed his expenses. The service was such as any law tribunal in the country might have required of him. We cannot regard it as such service as draws after it a pension to his widow, in case his death was in consequence of the exposures of the trip, which we assume, for the sake of the argument, was the case. The law which exempted him from service, after being placed on the retired list, except in the contingency of war, is explicit. If the summons to Washington imposed such service as the applicant assumes it was—service appertaining to one on the active list—then he was not bound to obey the order.

The committee feel constrained to indorse the views of the Interior Department as the just exposition of the law. It is not their province to frame a new rule, but decide whether this case falls equitably within the purview of the existing law. The rule is that any officer in the Navy, disabled by reason of any wound or injury received or disease contracted while *in the service of the United States and in line of duty*, shall be entitled to receive a pension, while living, according to the degree of the disability; and if he die by reason of the wound, injury, or disease, his widow shall receive it. Mark: he must both be in the service of the United States and in the line of duty when he incurs the disability. Was Rear-Admiral Lanman in the service of the United States, in the sense of the law, at the time he contracted the disease of which it is said he died? We think he was not; that though an officer and enjoying pay, he was, by the express terms of the law, debarred employment in the service of the United States in the proper sense of that expression while on the retired list. We do not regard his obedience to appear and testify as a witness as an employment, but just such service as any citizen is liable to be called on to perform.

The committee, therefore, recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT :

[To accompany bill H. R. 3695.]

The Committee on Pensions, to whom was referred the bill (H. R. 3695) granting a pension to Eliza A. Flamant, submit the following report :

That there is no evidence before the committee upon which to base a favorable report in this case. It is shown that Charles F. Flamant was a soldier for some time in the United States Army, and that he was discharged upon the order of the Secretary of War; that he was directed to appear for examination for admission into the civil service as a first clerk, and was appointed April 1, 1863, a clerk in the office of the Adjutant-General of the Army. It is stated that he died in February, 1865, but nothing further appears in the case. It is therefore recommended that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill H. R. 3721.]

*The Committee on Pensions, to whom was referred the bill. (H. R. 3721)
granting a pension to Ezra C. Owen, report :*

That the evidence does not satisfactorily prove that the disease was contracted in the service. Owen seems to have been a good soldier and to be at present nearly blind, but wholly fails to show, by such proof as the committee feel should be presented to establish the material fact, that the disease of the eyes was the result of his services as a soldier. The examining-surgeon expresses the opinion that it originated in the service. We think, in the absence of testimony from the regimental surgeon, effort should have been made to secure proof from some of his company officers or comrades. Nothing of the kind is produced. We therefore recommend that the bill be indefinitely postponed.



IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 619.]

The Committee on Pensions, to whom was referred the bill (H. R. 619) granting a pension to Elizabeth Tipton, report :

That while the proof shows that her husband, Stephen Tipton, was captured at his home or near it, and was taken to a rebel prison and subsequently died there, it does not sufficiently appear that he was enlisted as a soldier so as to have been properly subject to military orders and discipline. No time is stated for which he enlisted. He was not mustered into the service. This, however, would not be a fatal objection to granting a pension, if other evidence were presented in the case showing service. We cannot understand upon what authority a furlough was granted to Tipton if he was a duly enlisted soldier. No orders nor copies of orders in the case are presented from any officer above Captain McLaughlin, in the service. There is nothing to show the soldier might not have left the service at any moment without risk or liability to arrest as a deserter or soldier. We therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Daniel G. Gallion, praying for a pension, submit the following report:

Daniel G. Gallion enlisted as a private in Company A, of the One hundred and thirtieth Regiment of Indiana Infantry Volunteers, on the 18th day of February, 1864, to serve three years, and he was discharged therefrom on the 2d day of September, 1865.

Said Gallion states that, while in the service of the United States, and in the line of his duty, he was captured and confined for six months in Andersonville prison; and that in consequence of said imprisonment he contracted disease, on account of which he asks a pension.

There is very little evidence on file in this case, and no medical testimony tending to show said soldier's physical condition at his enlistment, nor his condition at the time of his discharge, nor that his alleged disease has been continuous.

The committee therefore ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. STEVENSON submitted the following

REPORT:

[To accompany bill S. 454.]

The committee to whom was referred the bill (S. 454) to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, have had the same under consideration and beg leave to report :

By an act of Congress, approved December 15, 1868, the Secretary of War was directed to make sale, at public auction, of the lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money, after advertising the time, terms, and place of sale in one of the principal newspapers in each of the cities of Washington, New York, and Cincinnati for sixty days prior to the day of sale.

There was exempted from said sale, by the terms of the act, the buildings, with the lots on which they stand, numbered 30, 31, and 32, and also building numbered 25, with enough of the lot on which it stands to give a breadth of ten rods on High street, otherwise known as Washington street, being the same which have heretofore been assigned by the War Department to the Bureau of Refugees, Freedmen and Abandoned Lands for educational purposes, which said last-mentioned lots and buildings the Secretary of War was directed and authorized to convey to Stover College, an institution of learning chartered by the State of West Virginia. The said act further empowered and directed the Secretary of War to convey to the respective purchasers of the property therein directed to be sold upon the payment of the purchase-money.

The proceeds of sale arising from said property were, by the terms of said act, to be applied as follows:

First. In defraying the expenses of making said sale.

Second. In refunding to the United States the principal sum of purchase-money paid for said lands, tenements, and water-privileges by the United States, and for the erecting of buildings thereon, amounting by estimate to more than five hundred thousand dollars.

Third. If any surplus remain, the Secretary of War was directed to deliver the same to such agent as the legislature of West Virginia shall appoint to receive the same; but upon condition that such surplus shall

be received by the State of West Virginia to be set apart, held, invested, used, and applied as a part of the school-fund of that State, under and by virtue of, and in manner and form as provided in, section first of the tenth article of the constitution of West Virginia, and for no other purpose. (United States Statutes at Large, pages 265 and 266.)

From a report dated 7th November, 1870, made by A. B. Dyer, chief of Ordnance Bureau, who was charged by the Secretary of War with the duty of making said sale, it appears that the property was sold on the 30th November and 1st December, 1869, in strict accordance with the act of 15th December, 1868; that it was sold in parcels, and that one hundred and four purchasers executed bonds and notes with security, payable in one and two years. Several purchasers paid the entire purchase-money and took deeds for their purchases, while others have failed to comply with the terms of sale.

Copies of this report, advertisement of said sale, topographical map and plat of the property, prepared by J. Howell Brown, and approved by the Secretary of War, will be found in Senate Executive Document No. 6, Forty-third Congress, first session, filed with this report and made part hereof.

The proceeds of this sale amounted to \$297,793.50.

It will be perceived from the advertisement of this property by the Chief of Ordnance, that the United States only proposed to sell and did sell the right and title of the Government to the water-power on the Potomac and to the water-power on the Shenandoah, and certain described lots adjacent thereto. One F. C. Adams bought the entire water-power on the Potomac and Shenandoah Rivers as held and claimed by the United States, embracing site of old armory-buildings, a musket-factory, Byrne's Island, and all that slip of ground and bluff bordering on the Potomac River lying between said river and the streets and lots as laid down on the map of J. Howell Brown, dated 20th April, 1869, and already referred to.

The Secretary of War, actuated by humane considerations, and in consequence of a very destructive flood in the Potomac and Shenandoah Rivers, in 1869, acceded to the request of many of the purchasers to postpone suit on the bonds then due, for the purchase-money of the property sold by the United States at Harper's Ferry until all the bonds for the same should mature.

At a later period relief was sought in Congress by some of these purchasers seeking to be released from their purchase by a total surrender of the same to the Government, and a cancelment of their bonds. Several bills looking to such relief were introduced into Congress in the years 1872 and 1873, but all of them failed of their object.

Upon the 20th of July, 1872, the Secretary of War inclosed to the Attorney-General the original bonds of F. C. Adams, and his sureties, to the United States for the sum of \$206,000 for his purchase at said sale, requesting prompt action to be taken for the collection of said bonds. The Attorney-General transmitted said bonds of Adams to Hon. George P. Fisher, district attorney of the United States for this District, (on what day is not stated, but probably in August or September, 1872,) with instructions to institute promptly all necessary legal proceedings against F. C. Adams and his sureties for the amount of said bonds and for the enforcement of the vendor's lien contained in the conditions thereof.

Why said bonds were not sent to the district attorney of the United States for West Virginia, instead of to the Hon. G. P. Fisher, United States attorney for this District, does not appear, and why all defects

of title to the property sold to Adams, and the outstanding equities of Baltimore and Ohio Railroad, and all others, could not have been fully and promptly settled in one equity suit for the enforcement of the vendor's lien in United States court in West Virginia, your committee are unable to perceive.

Suit was brought by the district attorney of the United States for this District on 3d of February, 1873, against Francis C. Adams and his sureties, on his three several bonds given to the United States for his said purchase of property at Harper's Ferry. Subsequent to the bringing of this suit in this District, a conference was held, at the Attorney-General's request, in this city, between himself, the district attorney of the United States for West Virginia, N. Goff, and the district attorney for this District, G. P. Fisher, and the counsel for the sureties of F. C. Adams. The latter objected to a decree, but agreed that if the Government of the United States would not proceed to a sale under a decree to enforce the vendor's lien for the entire purchase-money until the determination of a claim made by the Baltimore and Ohio Railroad Company, they would acknowledge service of process and thus expedite the suit. The sureties of Adams were informed that the Government had decided to press for a decree for the enforcement of the lien, and immediately after obtaining it, to institute proceedings to quiet title to the premises against the Baltimore and Ohio Railroad Company, and not to make sale until after the decision of the issue between the Government and the said Baltimore and Ohio Railroad Company, so that the best price could be had for the property. Counsel then agreed to do all in their power to hasten the issue.

It was further agreed between the Attorney-General, the United States district attorney for West Virginia, Mr. N. Goff, and district attorney for this District, G. P. Fisher, that suits in equity should be filed by the United States against Adams and his sureties in the district of West Virginia, for the purpose of enforcing the vendor's lien.

These bills were filed in July, 1873, and a decree had in September or October, 1873, for the sale of the property in each case, the sale to be made by Mr. N. Goff, as trustee, at a time to be fixed by the future order of the court.

Suit was brought by the Baltimore and Ohio Railroad Company, in a State court in West Virginia, to quiet its title to certain property alleged to have been sold by the United States to F. C. Adams, before the institution of the suit by George P. Fisher against Adams and his sureties in this District, which suit your committee are informed by a letter of the Attorney-General to Hon. Henry G. Davis, dated 14th December, 1874, has been determined in favor of said Baltimore and Ohio Railroad. No copy of the record of that suit has been transmitted by the Attorney-General to the committee. What defense, if any, was made to said suit by any of the counsel of the United States does not appear. Your committee are wholly uninformed as to how the judgments of the United States against Adams and his sureties are affected by this suit and recovery of the Baltimore and Ohio Railroad Company in said State court.

It appears that no sale has been attempted under the decree obtained in favor of the United States against F. C. Adams and his sureties in the United States district court for West Virginia.

It does not appear what effort, if any, has been made to collect the money under the suit instituted by the district attorney of this District against F. C. Adams and his sureties brought on 10th February, 1873.

In January, 1874, after a consultation with the district attorney and the Attorney-General of the United States, the district attorney for West Virginia, by their advice and consent instituted a suit in equity, in the United States court at Wheeling, W. Va., in the name of the United States and F. C. Adams and his sureties, against the Baltimore and Ohio Railroad, to remove a cloud from the title of the property sold by the United States to F. C. Adams, which will appear by a letter from the Attorney-General of the United States to H. G. Davis, dated 14th December, 1874, and also by letter of Attorney-General to Hon. M. H. Carpenter, president *pro tem.* of the United States Senate, dated 6th May, 1874, in reply to a Senate resolution of 21st of January, 1874, for information relative to the sale of Government property at Harper's Ferry, with the accompanying documents, which are asked to be made parts hereof.

Your committee can but express some surprise at the institution of this last suit at Wheeling, W. Va., in the joint names of the United States and F. C. Adams and his sureties against the Baltimore and Ohio Railroad.

Why the suit brought by the Baltimore and Ohio Railroad in the State court in West Virginia, to quiet its title against the United States and others, was not promptly transferred on the application of the United States to the United States court, where all matters in dispute could have been settled, is wholly unexplained. Why the Baltimore and Ohio Railroad Company should have been allowed by the counsel of the United States to obtain a judgment in a State court to quiet its title to certain property sold by the United States and for the purchase-money of which sale the United States had instituted proceedings against F. C. Adams and his sureties, without a transfer of suit to a United States court, is most extraordinary. It is still more wonderful that pending such controversy, in the name of the Baltimore and Ohio Railroad Company in a State court, and after judgment, that the United States should join in an independent original suit with F. C. Adams and his sureties in the United States court against the Baltimore and Ohio Railroad Company to quiet their title to the same property.

Your committee have not before them the records of these several suits, and it would be therefore improper to express any opinion in relation to them.

From the official documents and communications of the Attorney-General filed with this report, your committee must express the opinion that there has been great laches somewhere in the collection of this claim.

As far as they are advised and informed, F. C. Adams has shown himself entitled to no equity.

Had suits in equity been promptly instituted in the name of the United States in the United States court against F. C. Adams and his sureties in 1872, and the Baltimore and Ohio Railroad been made a party, requiring them to set up any title to the property sold, no reason is perceived why this whole controversy could not have been promptly settled. Instead of such a procedure, several independent suits have been instituted at increased cost and delay, and little progress has been made after years to collect the purchase-money due the United States.

In the mean time the property has been going to decay, at great injury to the people of Harper's Ferry and its vicinity.

Your committee recommend the indefinite postponement of said bill, and the prompt enforcement of the purchase-money.

All of which is respectfully recommended.

[Senate Ex. Doc. No. 6. 43d Congress, 1st session.]

Letter from the chief clerk of the War Department, communicating, in compliance with a Senate resolution of December 4, 1873, information in relation to the sale of Government property at Harper's Ferry.—December 15, 1873. ordered to lie on the table and be printed.

WAR DEPARTMENT,
Washington City, December 12, 1873.

SIR: In response to the resolution of the United States Senate of the 4th instant, directing the Secretary of War to "transmit to the Senate all the information in his possession in relation to the Government property at Harper's Ferry, W. Va., including the sale thereof," I have the honor, in the absence of the Secretary of War, to transmit herewith a transcript from the records of the Department and copies of such papers on file as will give full information in relation to the Harper's Ferry sale and subsequent official action thereon by the War Department.

Very respectfully, your obedient servant,

H. T. CROSBY,
Chief Clerk.

The PRESIDENT *pro tempore* of the United States Senate.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, December 11, 1873.

SIR: In fulfillment of the requirements of the resolution of the Senate of December 4, 1873, I inclose herewith to you transcript from the records of this office and copies of such papers on file here as will give full information in relation to the Harper's Ferry sale and subsequent official action thereon by the War Department.

The inclosures are:

1. Transcript of the account of sale, with photographic copy of the map of Harper's Ferry.

2. Copies of correspondence relating to the property disposed of at the sale.

The Senate resolution is herewith returned.

By order of the Chief of Ordnance:

Very respectfully, your obedient servant,

S. V. BENÉT,
Major of Ordnance.

The Hon. the SECRETARY OF WAR.

6 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

Abstract of sale of United States property at and near Harper's Ferry, W. Va., sold at public December, 1869, by J. Daniel Potterfield, auctioneer, as divided and laid out by S. Howell War, November 16, 1869, made under the supervision of Capt. Daniel J. Young, O. S. K., act providing for the sale of the lands, tenements, and water-privileges belonging to the bracing also the unsold lots, and lots purchased and not paid for, as per map and sale of

Block.	Lot.	Date of map.	Location and remarks.	Names of purchasers.	Amount.	Declined by purchaser and taken by—
	1	1869	The water-power entire of the Potomac River as held by the United States, embracing site of old armory-buildings or musket-factory, Byrnes Island, and all that strip of land and bluff bordering on the Potomac River and lying between said river and the streets and lots as laid down on map of 1869.	Capt. F. C. Adams*.....	\$176,000 00	
	2	1869	The water-power entire of the Shenandoah River as held by the United States, embracing the site of the rifle-factory, with all the appurtenances thereto belonging.	Capt. F. C. Adams*.....	30,000 00	
	3	1869	The Shenandoah Ferry, with a tract of land containing 68½ acres on the south side of the river, and a ferry-lot on north side, with front on river of 243 feet, on Tell street 193 feet, on Hamilton street 66½ feet, and on Bridge street 83 feet; two stone houses south side of river.	John W. Neer & Co.....	1,790 00	
	4	1869	The perpetual right to cut and remove wood from a tract of 1,395½ acres of mountain-land lying on the south side of the Shenandoah River adjoining the ferry-tract.	David M. King.....	3,600 00	
	5	...	The right to dig iron-ore upon a tract of 1,600 acres of land bordering on the Potomac River, known as "Friends' Ore-Bank," acquired from Henry Lee and others by deed dated May 8, 1800. <i>Northeast end of arsenal lot, having on it the old superintendent's office.</i>	William C. Bradley.....	13,100 00	John A. Ahl and Dan V. Ahl.
A	1	1869	On Shenandoah.....	Thomas J. Burley.....	2,025 00	
A	2	1869	do.....	Capt. F. C. Adams.....	1,655 00	
A	3	1869	do.....	J. M. Decaulne.....	1,800 00	
A	4	1869	do.....	do.....	2,000 00	
A	5	1869	do.....	Capt. F. C. Adams.....	2,050 00	(See block A, lot 3)
A	6	1869	do.....	John L. Walsh.....	2,025 00	
A	7	1869	do.....	Mary Conway.....	2,065 00	
B	1	1869	do.....	John H. Hodges.....	1,850 00	
B	2	1869	do.....	Withdrawn from sale by United States.	6,100 00	
B	3	1869	do.....	M. T. C. A., and James C. McGraw.	5,100 00	
C	11	1869	do.....	P. H. Strode, for Edw'd Lucas's, jr., heirs.	100 00	
F	1	1869	do.....	Daniel Ames.....	1,650 00	
F	2	1869	do.....	John Wilson.....	1,800 00	
F	3	1869	do.....	Harriet M. Neer.....	150 00	
G	2	1869	do.....	Michael Doran.....	165 00	
G	3	1869	do.....	William Doran.....	160 00	
G	4	1869	do.....	Fenton V. Cockrell.....	95 00	
G	1	1869	Lots north of Shenandoah st.	Joseph D. Holmes.....	3,125 00	
	2	1869	do.....	Isabella Leisenring.....	1,475 00	
	3	1869	do.....	Edward Tearney.....	720 00	
	4	1869	do.....	Daniel Ames.....	330 00	(See block F, lot 1)

* Notes and bonds of F. C. Adams sent to Secretary of War July 15, 1872.

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 7

auCTION, at the town of Harper's Ferry, on the 30th of November and the 1st and 2d days of Brown, surveyor, as per map of 1869, approved by Hon. William W. Belknap, Secretary of acting under instructions from the Ordnance Department at Washington, in pursuance of "An United States at and near Harper's Ferry, in the county of Jefferson, West Virginia," em- 1532.

Notes secured by bond for—				When paid.		Date of deed.	Remarks.
One year.		Two years.					
Date.	Amount.	Date.	Amount.	First note.	Second note.		
Dec. 30, 1869	\$82,000 00	Dec. 30, 1869	\$82,000 00				
Dec. 16, 1869	15,000 00	Dec. 16, 1869	15,000 00				
Dec. 6, 1869	875 00	Dec. 6, 1869	875 00				
Dec. 6, 1869	1,875 00	Dec. 6, 1869	1,875 00				
Dec. 6, 1869	6,550 00	Dec. 6, 1869	6,550 00				
Dec. 6, 1869	1,012 50	Dec. 6, 1869	1,012 50				
Dec. 16, 1869	1,852 50	Dec. 16, 1869	1,852 50				
Dec. 6, 1869	1,900 00	Dec. 6, 1869	1,900 00				
Dec. 6, 1869	1,158 00	Dec. 6, 1869	1,158 00				
Dec. 6, 1869	1,042 50	Dec. 6, 1869	1,042 50				
Dec. 6, 1869	925 00	Dec. 6, 1869	925 00				
Dec. 6, 1869	2,550 00	Dec. 6, 1869	2,550 00				
Dec. 6, 1869	55 00	Dec. 6, 1869	55 00				
Dec. 6, 1869	2,049 50	Dec. 6, 1869	2,049 50				
Dec. 6, 1869	975 00	Dec. 6, 1869	975 00				
Dec. 6, 1869	75 00	Dec. 6, 1869	75 00				
Dec. 6, 1869	82 50	Dec. 6, 1869	82 50				
Dec. 6, 1869	80 00	Dec. 6, 1869	80 00				
Dec. 6, 1869	47 50	Dec. 6, 1869	47 50				
Dec. 6, 1869	1,562 50	Dec. 6, 1869	1,562 50				
Dec. 6, 1869	737 50	Dec. 6, 1869	737 50				
Dec. 6, 1869	547 50	Dec. 6, 1869	547 50				

with recommendation that Department of Justice begin suit on same

10 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

Abstract of sale of United States property at and near Harper's Ferry, W

Block.	Lot.	Date of map.	Location and remarks.	Names of purchasers.	Amount.	Declined by purchaser and taken by—
R	6	1869	North of Ridge street	Nicholas Marmion	\$26 00	(See block I, lot 5)
R	7	1869	do.	Daniel Ames	10 00	{ (See block F, lot 1)
R	8	1869	do.	do.	12 00	
S	1	1869	do.	Trueman W. Potterfield	11 00	{ (See lot 4)
S	2	1869	do.	David M. King	16 00	
S	3	1869	do.	Daniel Ames	40 00	{ (See block F, lot 1)
S	4	1869	do.	do.	38 00	
S	5	1869	do.	Edw'd H. Chambers, for Meth. parsonage.	21 00	{ (See block H, lot 7, Camp Hill.)
S	6	1869	do.	do.	10 00	
T	1	1869	do.	Bettie E. Koonce	43 00	{ (See lot 3, north of Shenandoah st.)
T	2	1869	do.	Edward Tearney	65 00	
T	3	1869	do.	Joseph A. McFadden	45 00	{ (See lot 7, north of Shenandoah st.)
T	4	1869	do.	Solomon V. Yantis	68 00	
U	1	1869	do.	Mary A. Percival	8 00	{ (See lot 4)
U	2	1869	do.	Ellen M. Brittain	12 00	
U	3	1869	do.	David M. King	34 00	{ (See lot 4)
U	4	1869	do.	Harry King	44 00	
V	1	1869	Between Putnam and Van Wert streets.	Wilbur A. Winters	95 00	(See block Q, lot 5)
V	2	1869	do.	P. H. Strode, for himself and other heirs of Ed. Lucas, Jr., deceased.	10 00	{ (See block C, lot 11)
V	3	1869	do.			
V	4	1869	do.	Thomas A. Kirwan	50 00	{ Ann Jackson
V	5	1869	do.	Mary D. Price	5 00	
V	6	1869	do.	do.	5 00	{ (See block O, lot 14)
V	7	1869	do.	Nathan Johnson	16 00	
W	1	1869	East of Paulding street	Lydia A. Kilham	10 00	{ (See block O, lot 14)
W	2	1869	do.	Colored M. E. Church	5 00	
X	1	1869	Between Van Wert and North Cliff streets.	Nancy Blaham	15 00	{ (See block I, lot 5)
X	2	1869	do.	Ellen King	8 00	
X	3	1869	do.	Francis Gannon	5 00	{ (See lot 34, Wager reservation.)
X	4	1869	do.	Patrick O'Beirne	6 50	
Y	1	1869	do.	Francis Zoll	4 00	{ (See block I, lot 5)
Y	2	1869	do.	Nicholas Marmion	6 00	
Y	3	1869	do.	James Musgrove	10 00	{ (See block F, lot 1)
Y	4	1869	do.	Daniel Ames	1, 225 00	
AA	1	1869	Between Washington and Potomac streets.	Polly McArthur	1, 750 00	{ (See lot 3, north of Shenandoah st.)
AA	2	1869	do.	Patrick Higgins	225 00	
AA	3	1869	do.	Mary A. Cavalier	220 00	{ (See lot 3, north of Shenandoah st.)
AA	4	1869	do.	Edward Tearney	310 00	
AA	5	1869	do.	Michael Tearney	400 00	{ (See lot 34, Wager reservation.)
AA	6	1869	do.	Thomas A. Kirwan	250 00	
AA	7	1869	do.	Henry Russel	10 00	{ (See lot 34, Wager reservation.)
AA	8	1869	do.	Thomas A. Kirwan	470 00	
AA	9	1869	do.	Thomas T. Earnshaw	600 00	{ (See lot 34, Wager reservation.)
AA	10	1869	do.	Patrick O'Beirne	135 00	
BB	1	1869	On Washington and Ridge streets.	John L. Walsh	100 00	{ (See block A, lot 6)
BB	2	1869	do.	Charles E. Beller	260 00	
BB	3	1869	do.	John Fitzpatrick	160 00	{ (See lot 34, Wager reservation.)
BB	4	1869	do.	Thomas A. Kirwan	250 00	
BB	5	1869	do.	Valinda Stipes	5 00	{ (See lot 34, Wager reservation.)
BB	6	1869	do.	Patrick O'Beirne	210 00	
BB	7	1869	do.	Thomas A. Kirwan	150 00	{ (See lot 4)
BB	8	1869	do.	do.	240 00	
BB	9	1869	do.	do.	270 00	{ (See lot 4)
BB	10	1869	do.	David M. King	100 00	
CC	1	1869	On Washington and Clay sts.	Thomas H. Trail	190 00	{ (See block H, lot 7, Camp Hill.)
CC	2	1869	do.	Edmond H. Chambers	200 00	
CC	3	1869	do.	Thomas T. Earnshaw	150 00	{ (See lot 34, Wager reservation.)
CC	4	1869	do.	John Billman	140 00	
DD	1	1869	Between Fillmore and Clay sts			

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 11

Ta., sold at public auction, at the town of Harper's Ferry, &c.—Continued.

[illegible]

12 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

Abstract of sale of United States property at and near Harper's Ferry, W.

Block.	Lot.	Date of map.	Location and remarks.	Names of purchasers.	Amount.	Declined by purchaser and taken by—
DD	2	1869	Between Fillmore and Clay streets.	Edmond H. Chambers...	\$250 00	(See block H, lot 7, Camp Hill.)
DD	3	1869	do	Dorsey H. Irwin	120 00	(See lot 8, north of Shenandoah st.)
DD	4	1869	do	James McGraw	240 00	
DD	5	1869	do	do	240 00	
DD	6	1869	do	John O'Farrell	190 00	
EE	1	1869	Between S. Cliff and Clay sts.	do	130 00	
EE	2	1869	do	John L. Walsh	140 00	(See block A, lot 6.)
EE	3	1869	do	John H. Hodges	140 00	
FF	1	1869	Camp Hill.	Harrison Hough	240 00	
FF	2	1869	do	Abraham Clemmer	239 00	
FF	3	1869	do	do	240 00	
FF	4	1869	do	do	230 00	
FF	5	1869	do	John F. Conahan.	50 00	
FF	6	1869	do	Abraham Clemmer	46 00	(See block FF, lots
FF	7	1869	do	do	24 00	2, 3, and 4.)
FF	8	1869	do	J. P. Keller	40 00	
GG	1	1869	do	Rev. Jared Bowman, for Colored M. E. Church.	50 00	
GG	2	1869	do	Ellen King	140 00	(See block 2, lot 2.)
GG	3	1869	do	Abraham Clemmer	200 00	(See block FF, lots 2, 3, and 4.)
GG	4	1869	do	John Fitzpatrick	180 00	(See block BB,
GG	5	1869	do	do	125 00	lot 4.)
GG	6	1869	do	William Butts	90 00	
GG	7	1869	do	Edward Polls	60 00	
GG	8	1869	do	Mary I. Earnshaw	40 00	
HH	1	1869	do	Henry G. Rowson.	200 00	
HH	2	1869	do	James L. Shewbridge	205 00	
HH	3	1869	do	Daniel Ames	185 00	(See block F, lot 1)
HH	4	1869	do	do	160 00	
HH	5	1869	do	Pompey Massey	105 00	
HH	6	1869	do	Anthony Bussey	80 00	
HH	7	1869	do	do	75 00	
HH	8	1869	do	do	125 00	
II	1	1869	do	Mary D. Young	1,200 00	
II	3	1869	do	Va. Lodge No. 1, I.O.O.F.	130 00	
JJ	1	1869	do	William Exner	115 00	
JJ	2	1869	do	Thomas A. Kirwan	120 00	(John H. Marten...
JJ	3	1869	do	do	150 00	
JJ	4	1869	do	do	172 00	(John T. Reed
JJ	5	1869	do	do	225 00	
JJ	6	1869	do	do	235 00	(James W. Hop-
JJ	7	1869	do	do	220 00	wood.
JJ	8	1869	do	Francis Gannon	105 00	(See block I, lot 5.)
JJ	9	1869	do	Thomas A. Kirwan	205 00	
JJ	10	1869	do	do	140 00	
JJ	11	1869	do	do	150 00	(See block JJ, lots
JJ	12	1869	do	do	150 00	4 and 5.)
JJ	13	1869	do	do	180 00	
JJ	14	1869	do	Mary D. Cochrane	200 00	
KK	1	1869	do	Thomas H. Trail	90 00	
KK	2	1869	do	Michael Tearney	125 00	(See block A A, lot 6)
KK	3	1869	do	Thomas A. Kirwan	230 00	
KK	4	1869	do	do	245 00	(Mary B. Rodrick ..
KK	5	1869	do	do	260 00	Sally J. D. Grubb..
KK	6	1869	do	James Weaver	250 00	
KK	7	1869	do	George L. Weaver	300 00	
KK	8	1869	do	Julia A. Beale.	90 00	
KK	9	1869	do	Thomas A. Kirwan	130 00	
KK	10	1869	do	do	155 00	
KK	11	1869	do	do	130 00	
KK	12	1869	do	do	124 00	
KK	13	1869	do	Caspar Hutzell	130 00	
KK	14	1869	do	Thomas A. Kirwan	150 00	(John G. Mitchell ..
LL	1	1869	do	Oliver Kemp	65 00	
LL	2	1869	do	Daniel Ames	50 00	(See block F, lot 1)
LL	3	1869	do	do	56 00	
LL	4	1869	do	James Doody	62 00	(See block H, lot 1)
LL	5	1869	do	Thomas B. Winters	61 00	
LL	6	1869	do	do	89 00	
LL	7	1869	do	Louisa Evans.	20 00	(See block I, lots 2 and 3.)

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. . 13

Fa., sold at public auction, at the town of Harper's Ferry, &c.—Continued.

[illegible]

14. SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

Abstract of sale of United States property at and near Harper's Ferry, W.

Block.	Lot.	Date of map.	Location and remarks.	Names of purchasers.	Amount.	Declined by purchaser and taken by—
LL	8	1869	Camp Hill.....	Dorsey H. Irwin.....	\$25 00	} (See lot 8, north of Shenandoah st.)
LL	9	1869	do.....	do.....	15 00	
LL	10	1869	do.....	Daniel Ames.....	20 00	} (See block F, lot 1.)
LL	11	1869	do.....	do.....	22 00	
LL	12	1869	do.....	do.....	31 00	
MM	1	1869	do.....	Arthur Lewis.....	120 00	
MM	2	1869	do.....	Henry P. Dean.....	110 00	
MM	3	1869	do.....	Owen Blanchfield.....	130 00	
MM	4	1869	do.....	Joseph T. Young.....	100 00	
MM	5	1869	do.....	George Koonce.....	65 00	
MM	6	1869	do.....	do.....	60 00	
MM	7	1869	do.....	Trueman W. Potterfield.....	55 00	
MM	8	1869	do.....	James H. Boden.....	60 00	
MM	9	1869	do.....	William B. Chambers.....	45 00	
MM	10	1869	do.....	Annie L. McCarty.....	44 00	
MM	11	1869	do.....	Thomas Jefferson.....	51 00	
MM	12	1869	do.....	William B. Chambers.....	57 00	
MM	13	1869	do.....	Jacob Bird.....	51 00	
MM	14	1869	do.....	Charles Hardy.....	55 00	Benjamin F. Hobbs
Total sales.....					297, 793 50	

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 15

Es., sold at public auction, at the town of Harper's Ferry, &c.—Continued.

Notes secured by bond for—				When paid.		Date of deed.	Remarks.
One year.		Two years.					
Date.	Amount.	Date.	Amount.	First note.	Second note.		
Dec. 6, 1869	\$80 00	Dec. 6, 1869	\$80 00				
Dec. 6, 1869	55 00	Dec. 6, 1869	55 00				
Dec. 6, 1869	65 00	Dec. 6, 1869	65 00				
Dec. 6, 1869	50 00	Dec. 6, 1869	50 00				
Dec. 6, 1869	27 50	Dec. 6, 1869	27 50				
Dec. 6, 1869	30 00	Dec. 6, 1869	30 00				
Dec. 6, 1869	22 50	Dec. 6, 1869	22 50				
Dec. 6, 1869	25 50	Dec. 6, 1869	25 50				
Dec. 6, 1869	25 50	Dec. 6, 1869	25 50				
Dec. 6, 1869	27 50	Dec. 6, 1869	27 50				

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CORRESPONDENCE RELATING TO THE HARPER'S FERRY PURCHASES.

HARPER'S FERRY, W. VA., November 4, 1870.

GENERAL: Inclosed please find a petition which explains its purport, addressed to the Hon. William W. Belknap, Secretary of War, by a few of the purchasers, at the sale of public lands at this place, on the 30th November and 1st December, 1869, on behalf of themselves and other purchasers. Doubtless it would have been signed by all the purchasers if time permitted, but I advised its transmission so that it might meet the honorable Secretary before he closed his annual report to the President, in which he might, if he deemed it proper, refer to the subject.

With the highest respect, your obedient servant,

A. M. KITZMILLER.
Counsel for the parties.

Bvt. Brig. Gen. A. B. DYER,
Chief of Ordnance, Washington, D. C.

[Inclosure to A. M. Kitzmiller's letter.]

HARPER'S FERRY, JEFFERSON COUNTY, W. VA.,
November 1, 1870.

To the Hon. WILLIAM W. BELKNAP, *Secretary of War:*

The undersigned, all citizens of Harper's Ferry, in the county of Jefferson, in the State of West Virginia, who, on the 30th November and the 1st December, 1869, did become the purchasers of lots at the public sales of the United States lands, at the said place, in pursuance of the provisions of an act of Congress for that purpose, desire, with great respect, to represent to your honor: That upon the purchase of the water-power and privileges of the Government, by private parties, the same being the first sold at auction, it was represented to the people generally that the intention and purposes of the purchaser were, without delay, to reconstruct and erect valuable factories and buildings on the lands heretofore owned by the United States and used and occupied by the Government as a national armory; the writers, with a great number of others, were induced to purchase largely, on the faith that these assurances would in like good faith be complied with on the part of the principal vendee of the Government, who bought, as the first property sold, lots Nos. 1 and 2 of the catalogue. In other words, we put faith in the widely-spread rumor and the corroborating statement of Captain Adams, the purchaser, that our purchases under these circumstances would be a very good investment for business purposes in the future, and, consequently, we did bid off our respective lots at prices largely in excess of their value under any other circumstances than those referred to.

The meaning of this is, that the undersigned have been grievously disappointed by the parties from whom it was supposed better things would be expected. However, these contingencies have not occurred, and we deplore the necessities of the times, which, doubtless, have mainly influenced subsequent action on this point by the parties most vitally interested in the prosecution of their enterprise.

But we do insist that our purchases of these lots, after the water-power and privileges were declared to be the property of Capt. F. C. Adams, as the highest bidder in the interests of private capitalists, was chiefly dictated by the idea that the prosperity of the town was thereby insured, as it had been before the war by the disbursement by the Government in previous years in manufacture, and to which the same water-power had been in those days devoted.

The undersigned wish to impress upon your honor's attention the substantive fact that, after the lapse of four years of war and its accompanying desolation to our village, the contiguous country, and all the business operations of the people generally in the vicinity, this gleam of prospective prosperity was indeed cheering and well calculated to afford renewed hopes of the future, to elate the spirits of everybody, and hence the eagerness to build upon these hopes, which so far were castles, imaginarily constructed, air-built, indeed.

In addition to all this, we beg to represent to your honor that many persons, carried away by this supposed prospect, in fact intoxicated with it, and probably by strong drink, mingled with the crowd of purchasers and run up the several lots on *bona fide* purchasers to excessive prices, whereby they imposed upon those really desirous of purchasing, and thus innocent bidders were compelled to pay those exorbitant values. This is manifest from the fact that these bogus bids were unclaimed and the purchases abandoned, either because the bidders were unable to comply with the terms of the sale, or they never intended to do so unless they could make a speculation on their several bids.

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 17

We, who have banded for these lots, although the prices were known and acknowledged by every one to be exorbitant, far beyond their real value, have done so in good faith.

Now, however, just in view of the payment of the first installment of our several purchases, namely, on the 6th day of December next, we are overwhelmed by the most terrible calamity which could at any time be the fate of any community, namely, by the flood. This awful disaster is well known to the world, and needs no comment on our part other than to state that our business has been therefrom paralyzed, our debtors unable to meet their engagements to us, and the people without money to restore themselves to their former condition; and besides this, we who are able or have anything beforehand are daily solicited or volunteer to relieve the destitute in this extremity to the full extent of our several abilities in their urgent wants. These are our neighbors and friends, and no excuse will answer in this emergency.

Under these circumstances, fully aware of your own constitutional inability to do anything for our relief pecuniarily, we do most respectfully request of your honor (and this we think you have the perfect right to order and direct) to suspend all or any coercive action on our bonds, for the payment of our respective bonds, and all the bonds falling due 6th December next, to await the action of Congress at its next session, to which we will by petition appeal for such relief in the premises as it may deem constitutional and just to grant to us under the circumstances.

Respectfully submitted for ourselves and other purchasers.

BRIDGET BOERLY.
JAMES DAODY.
JOHN E. ERWIN.
JOS. D. HOLMES.
J. CAVALIER.
J. M. DECAULNE.
DANIEL AMES.
JAMES CONWAY.
F. V. COCKELLE.
THOS. H. TRAIL.
BASIL AVIS.
TURNER FREEMAN.
H. RODRICK.

B. A. LEISEWRING.
CHARLES E. BELLER.
C. L. HOPWOOD.
EDWD. MURPHY.
JOHN W. NEER.
E. H. CHAMBERS.
F. GANNON.
JAMES MCGRAW.
JAS. T. REED.
ARTHUR C. LEWIS.
J. M. C. BIRD.
MARY D. PRICE.

[Indorsement on the foregoing papers.]

ORDNANCE OFFICE, November 7, 1870.

Respectfully submitted to the Secretary of War for his action and instructions.

The sale of the Harper's Ferry property was made in strict accordance with the act 15th December, 1868, authorizing and directing it to be sold "in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money, and that the proceeds of such sale shall be applied by him as follows:"

All the property was sold on the 30th November and 1st December, 1869, and notes and bonds were duly furnished by 104 purchasers, and several purchasers paid the entire purchase-money and received deeds for their purchases. But thirteen persons who purchased thirty-six lots—two of them with dwellings upon them—failed to comply with the terms of sale, and these lots remain the property of the United States.

I submit herewith copies of the bonds and notes in blank which were given by purchasers, all of which were prepared by the Judge-Advocate-General.

A. B. DYER,
Chief of Ordnance.

[Copy of bond and notes referred to in indorsement of the Chief of Ordnance.]

Know all men by these presents that we, _____ of _____, as principal, and _____ of _____ and _____ of _____, as sureties, are held and firmly bound unto the United States of America in the sum of _____ dollars, to be paid to the said United States; to which payment, well and truly to be made, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this _____ day of _____, A. D. 18 _____.

The condition of this obligation is such, that whereas by an act of Congress, approved on December 15, 1868, it was provided "That the Secretary of War be, and is hereby, authorized and directed to make sale at public auction of the lands, tenements, and water privileges, belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, except as hereinafter provided, in such parcels as shall, in

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his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money: *Provided*, That no such sale shall be made until the time, terms, and place thereof shall have been published in one of the principal newspapers in each of the cities of Washington, New York, and Cincinnati for sixty days prior to the day of sale;" it being further provided in said act that "the said Secretary of War is hereby empowered and required, on receiving the purchase-money in full, to execute all necessary deeds therefor to the purchaser or purchasers thereof, on behalf of the United States."

And whereas, in accordance with the said act, the Secretary of War did cause to be duly published in the Morning Chronicle, the New York Times, and the Cincinnati Gazette, each of said newspapers being one of the principal newspapers in the cities of Washington, New York, and Cincinnati, respectively, for sixty days in each, a public notice of the time, terms, and place of the sale mentioned and directed in said act, which said notice was in the words and figures following, to wit:

SALE OF THE UNITED STATES ARMORY AND OTHER GROUNDS AT HARPER'S FERRY, WEST VIRGINIA, AND VICINITY.

ORDNANCE OFFICE, WASHINGTON, *September 25, 1869.*

In pursuance of the act approved December 15, 1868, and by direction of the Secretary of War, the property of the United States at Harper's Ferry, W. Va., and vicinity, will be sold by public auction on Tuesday, the 30th day of November, 1869, commencing at 10 o'clock a. m., and continuing from day to day until all is sold.

The value of this property for manufacturing purposes is too well known to render it necessary to describe it herein; but a description of the same is being prepared, and will be sent to persons who may wish it, as soon as printed, upon their applying, by letter, to this office.

The property will be sold in lots. The first will include the musket factory, embracing a strip of land running to the western boundary on the Potomac, the armory canal, and water-power of the river. The walls of two large buildings are standing on this ground, and the foundations of several others; and the water-wheels with gearing, and the flumes, are almost in perfect order. Three of them are turbines of the most approved kind, and the others are mostly cast iron with wooden buckets.

The second will be the site of the rifle factory, and water-power on the Shenandoah; the buildings upon which have been destroyed, but the canal is in good order.

The third will be the Shenandoah Ferry, with a tract of 68 acres of land on the south, and a lot on the Harper's Ferry shore, opposite.

The fourth will be the perpetual right to cut and remove wood from a tract of 1,395 acres, mountain land, across the Shenandoah.

The fifth will be the right to dig iron-ore from a tract of about 1,400 acres of land, known as Friends' ore-bank, acquired by deed from Henry Lee and others.

The remainder, consisting of houses and lots in the town, will be sold lot by lot.

The Government will convey to the purchasers, after payment shall have been made in full, all its right and title to the property, which is believed to be perfect in every case.

The terms of sale prescribed by law are a credit of one and two years; the purchasers to give bond and security for the payment of the purchase-money, and these terms must be complied with within ten days after the sale.

A map showing the metes and bounds of the Harper's Ferry property will be exhibited at the time of sale.

The Government reserves the right to withdraw any or all lots offered, if bids are not satisfactory.

A. B. DYER,
Brevet Major-General, Chief of Ordnance.

NOTICE TO DELINQUENTS.—Persons who purchased lots in 1852, and have not fully paid for them, are notified that if they pay what is due before the day of sale, the lots will be deeded to them. Otherwise they will be resold.

A. B. DYER,
Brevet Major-General, Chief of Ordnance.

And whereas, at a public sale duly held and made in accordance with the act and notice, the said _____ did, in consideration of the sum of _____ dollars then and there bid, and agreed to be paid by him therefor, duly become the purchaser of a certain _____, situate and being _____, and bounded and described as follows, to wit: _____, with all the privileges and appurtenances thereunto in anywise belonging; and whereas, in accordance with the act and notice, he, the said _____, has made to the said United States two several promissory notes of even date herewith, in which

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 19

said notes, for value received promise to pay in one and two years respectively, the sum of dollars ; it being recited in each of said notes that the same is, with the other, given in consideration of the sale to the said by the said United States of the herein above particularly described; and that the vendor's lien of the said United States upon said is retained till full payment of the purchase-money; now, if the said shall fully pay to the said United States each of the said notes at the maturity thereof, and shall fully admit and recognize the existence and validity on the part of the United States of the vendor's lien on the said till the full payment of the purchase-money, and shall fully yield and consent to the enforcement of the said lien by the said United States, in case it sees fit to enforce the same in the event of the non-payment of said notes, or either of them, at maturity, then this obligation shall be void; otherwise in full force and effect.

Signed and sealed in presence of—

of

} ss :

County of

We, and the sureties named in, and who have executed, the annexed bond do severally, on oath, declare that we are, each of us, worth the sum of dollars, over and above all debts and liabilities whatever.

Subscribed and sworn to on this day of 18 , before me.

HARPER'S FERRY, WEST VIRGINIA, 18 .

For value received, I promise to pay to the United States of America, in two years from the date hereof, the sum of dollars cents; this note, with another of even date at one year, being given in consideration of the sale to me by the said United States of certain particularly described in a bond executed by me as principal and and as sureties, to the said United States, of even date herewith; the vendor's lien of the said United States upon said being retained till full payment of the purchase-money.

HARPER'S FERRY, WEST VIRGINIA, 18 .

For value received, I promise to pay to the United States of America, in one year from the date hereof, the sum of dollars cents; this note, with another of even date at two years, being given in consideration of the sale to me by the said United States of certain particularly described in a bond executed by me as principal, and and as sureties, to the said United States, of even date herewith; the vendor's lien of the said United States upon said being retained till full payment of the purchase-money.

HARPER'S FERRY, WEST VIRGINIA, May 30, 1871.

SIR: The Military Committee of the Senate of the United States, Forty-second Congress, first session, has approved Senate bill 67.

This bill authorizes the Secretary of War to postpone the enforced collection of the purchase-money due or to become due from purchasers of lots, or houses and lots, not embracing water-privileges, sold at Harper's Ferry, in the county of Jefferson, W. Va., on or about December 1, 1869, for a period not exceeding five years.

You are, therefore, most respectfully requested, in view of facts already laid before you, to take no action for the enforced collection of said moneys while that bill is pending.

In behalf of purchasers :

DANIEL AMES,
CHARLES DAVIES,
Committee.

Hon. W. W. BELKNAP, *Secretary of War.*

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[First indorsement on foregoing letter.]

ORDNANCE OFFICE, June 1, 1871.

Respectfully returned to the Secretary of War.

On the 4th of November last, A. M. Kitzmiller, in behalf of purchasers of lots at Harper's Ferry at the sale of November 30 and December 1, 1869, transmitted a memorial asking that in view of the then recent destruction of property by the great flood in the Potomac and Shenandoah Rivers, the payment of the notes which were coming due in the early part of the next month (December, 1870) might not be enforced, so as to allow them an opportunity to apply to Congress for temporary relief.

This memorial I submitted to you on the 7th of same month with an indorsement, a copy of which is submitted herewith.

In pursuance of the memorial which the parties made to Congress, two bills have been reported in the Senate for their relief, one 19th December, 1870, and the other 7th March, 1871, but neither of them were matured into laws. Copies of the bills are submitted herewith.

As no instructions were communicated to me in pursuance of my request of 7th November, 1870, I have taken no action toward enforcing the payment of the one-year notes due last December, and all of them remain unpaid.

It is believed that no serious damage will result to Government by letting these notes lie over until the two-year notes become due next December; and I respectfully recommend that relief to this extent be granted to these memorialists.

A. B. DYER,
Chief of Ordnance.

[Second indorsement on foregoing letter.]

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
Washington, D. C., June 3, 1871.

Respectfully returned.

In view of the pending and probable passage of a bill for the relief of these parties, the Secretary of War, in his discretion, may well refrain from proceeding at once to enforce the collection of the notes referred to.

But as the sureties to the bonds executed for the purpose of more effectually guaranteeing the payment of these notes have a right to insist that reasonable diligence shall be used by the Government in this behalf, they should explicitly and formally assent in writing to any suspension of proceedings against the parties which may be agreed upon, otherwise it might be claimed that the obligation of the sureties would by such an arrangement be impaired. A simple omission, however, of the Government for a limited time to take legal steps for the collection of the notes, unaccompanied by any agreement binding it to this course, would not affect the obligation of the sureties, and under such circumstances their assent to this voluntary non-action would not be required. See Story's Equity Jurisprudence, vol. 1, sec. 326.

J. HOLT,
Judge-Advocate-General.

[Third indorsement on foregoing letter.]

Approved on the conditions stated by Judge-Advocate-General.
By order of Secretary of War.

JOHN POTTS,
Chief Clerk War Department.

JUNE 7, 1871.

[Copy of indorsement of Ordnance Office; sent to the Judge-Advocate-General for an opinion.]

Indorsement.—A. M. Kitzmiller, attorney, Harper's Ferry, incloses petition, addressed to Hon. Secretary of War, by a few purchasers of property at recent sale at that place, asking relief from their obligations maturing in December next.

ORDNANCE OFFICE, November 7, 1870.

Respectfully submitted to the Secretary of War for his action and instructions.

The sale of the Harper's Ferry property was made in strict accordance with the act of December 15, 1868, authorizing and directing it to be sold "in such parcels as shall, in his opinion, be best adapted to secure the greatest amount of money therefor, on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money; and that the proceeds of such sale shall be applied by him as follows:"

All the property was sold on the 30th November and 1st December, 1869, and the notes and bonds were duly furnished by one hundred and four purchasers, and several

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 21

purchasers paid the entire purchase-money and received deeds for their purchases. But thirteen persons who purchased thirty-six lots, two of them with dwellings upon them, failed to comply with the terms of sale, and these lots remain the property of the United States.

I submit herewith copies of the bonds and notes, in blank, which were given by purchasers, all of which were prepared by the Judge-Advocate-General.

A. B. DYER,
Chief of Ordnance.

[Indorsement on the foregoing.]

ORDNANCE OFFICE, *June 20, 1871.*

The accompanying paper is respectfully referred to the Judge-Advocate-General, with the request that he will state whether it is necessary that, in carrying out the Secretary's instructions, the many sureties on the bonds shall be called upon to give their assent to delay in payment of the notes, or whether action can be delayed until the second series of notes are due, as recommended in my indorsement of June 1, 1871.

A. B. DYER,
Chief of Ordnance.

[Reply to the foregoing indorsement.]

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
Washington, D. C., June 21, 1871.

Respectfully returned.

The Secretary's indorsement is understood to be an approval of the views expressed by this Bureau on the 3d instant. This being the case, if any agreement is entered into by the Department whereby the Government binds itself to delay the collection of the notes, the sureties should formally and in writing assent to such agreement. If, however, the Department intends, in the exercise of its discretion, not to proceed to collect the notes for the present, provided it does not agree or oblige itself in any way to this course, but retains the right to proceed at any time it may deem proper to enforce the collection, then the assent of the sureties to this non-action would not be required. Under all the circumstances this would probably be the best course to pursue.

J. HOLT,
Judge-Advocate-General.

HARPER'S FERRY, W. VA., *November 23, 1871.*

DEAR SIR: You are most respectfully requested to suspend for one year, until Congress can pass a bill for our relief, or until the water privileges at Harper's Ferry shall have passed into the hands of parties who will improve them, the enforced collection of all notes made by me or for which I am bondsman, covering the purchase of lots, and of houses and lots, in amount about five thousand dollars, bought at Harper's Ferry, county of Jefferson, W. Va., in the year of 1869, for the following considerations:

I was active in obtaining the passage of the bill authorizing the sale of 1869; and I know that Congress intended it as a measure of relief to the industries of Harper's Ferry, which had been crippled by the destruction of its public works and the non-improvement of its water privileges. I know, also, that the prior sale of the water privileges was made an inducement to the purchase of business and residence property, without which such property would have found few buyers and would have brought but small prices.

That sale has come to be regarded by the people as virtually no sale, but a fraud and a trap, which releases them, morally at least, from all obligations to take their purchases, and such practically it has proved to be, these water privileges having been more effectually locked up and removed from the reach of improvement than if still in the possession of the United States.

These facts have been and will continue a source of much bitterness and disaffection until the causes are removed.

As regards my own case, I have made improvements on my purchases of 1869 to the amount of little less than five thousand dollars, (\$5,000,) which I most certainly should not have made had I supposed that for two years or more the water privileges were to remain idle. I have thus given the Government an additional security of nearly five thousand dollars, (\$5,000,) the United States still holding the titles to the property. The Government is, then, surely safe in giving me at least the extension I desire.

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After having placed one of the two houses, or rather ruins, bought of the United States in perfect repair, and before it had been occupied a month, the property was damaged by the flood to the extent of twenty-five hundred dollars, (\$2,500,) compelling immediate repairs of about four hundred dollars (\$400) to prevent utter destruction.

The other house, (lot 1, block AA, on Washington and Potomac streets,) it is claimed by the citizens, stands partly in the street, and was condemned in 1852, or thereabouts, and is now liable to be pulled down at the discretion of the township authorities.

In all other cases where houses were sold which stood wholly or in part on the streets it was so stated at the time of sale, and they were sold accordingly at reduced prices, but no such reservation was made with regard to this house. I had made extensive repairs and improvements upon this property before I learned that it was subject to any such liabilities. In this case an examination and adjustment will be required before any satisfactory settlement can be reached.

The entire property bought by me was yielding the Government, at the time of transfer, five dollars and fifty cents (\$5.50) per month, and it has been but little more profitable to myself. Whenever the Government chooses to enforce collections it can make every dollar for which I am holden, but should it do so now it would be ruinous to one who has ever been devoted to its interests and who has saved to its revenues hundreds of thousands of dollars.

This can be said of but few. If all parties, principals and bondsmen, were sold out who did not pay voluntarily, not one-third of our indebtedness could be realized.

A vigorous effort will be made at the coming session of Congress to get a relief bill through. In the mean time I am compelled to submit my case to the justice, generosity, and mercy of the Government.

Very respectfully,

General WILLIAM W. BELKNAP,
Sec'y of War, Washington, D. C.

DANIEL AMES.

[Indorsement on the foregoing.]

ORDNANCE OFFICE, November 29, 1871.

Respectfully returned to the Secretary of War.

The real estate belonging to the Ordnance Department at Harper's Ferry was, by act of Congress, sold on the 30th November and 1st December, 1869, on a credit of one and two years. Only one of the notes which fell due in December, 1870, has been paid, and it is very doubtful whether further payment will be made voluntarily next month. It is my intention to bring the subject to the notice of the Secretary as soon as the last payment shall have become due; and I recommend that no action be taken on this letter until that time.

A. B. DYER,
Chief of Ordnance.

[Copy of notice sent to all purchasers.]

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, November, 1871.

This is to notify you that your note for _____ dollars, payable at two years after date, will be due on the _____ day of December, 1871, and that payment of this note, as well as of the one of same date and for same amount, payable at one year after date, must be made at this office, on or before the _____ day of December, 1871.

If more convenient, the amount of the two notes may be deposited by you in any public depository to the "credit of the Treasurer of the United States on account of ordnance appropriations," and upon the certificate of deposit being received at this office your notes will be returned to you, the bonds canceled, and deeds for the property transmitted to you.

A. B. DYER,
Chief of Ordnance.

HARPER'S FERRY, W. VA., November 24, 1871.

DEAR SIR: I have an idea that this water-power company are sick of their speculation, and would be glad to get out of it, provided a door was opened sufficiently wide to allow them to do so; but if collections are attempted to be enforced, they will stave off a legal decision for an indefinite period. In the mean time our interests, and the interests of the Government, are suffering, while the people are clamoring and complaining, and capital is being created to be used against the Government in the coming

presidential canvass. Some measures must be taken at once to get these water-privileges into the hands of those who mean improvement.

If F. C. Adams & Co. can be induced, under cover of such a bill as I inclose to you, to surrender the property purchased for resale, I think we can get such a bill through at the coming session of Congress. Please sound Adams & Co. on this matter, and suggest any changes in the bill which may be desirable or which may help to secure its passage.

The bill now before the Senate can be referred back to the Military Committee, and amended by the substitution of this bill or its equivalent. If F. C. Adams & Co. can be induced to relinquish their purchases, we can secure the co-operation of all parties in favor of the passage of our bill.

If we can accomplish this thing, it will take a troublesome matter off the hands of the War Department.

Please let me hear from you as soon as practicable. Believing that we have your trusty good-will, and that you will co-operate with us in any just and lawful measures for the solution of our difficulties, I am your friend,

Very respectfully,

DANIEL AMES.

J. P. KELLER, Esq.,

Chief Clerk Ordnance Office, Washington, D. C.

[Inclosure to the foregoing.]

A bill for the relief of purchasers of lots, and houses and lots, sold by virtue of an act of Congress entitled "An act providing for the sale of lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia, approved December 15, 1868.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons having purchased property of any description sold by virtue of an act entitled "An act providing for the sale of lands, tenements, and water-privileges belonging to the United States at and near Harper's Ferry, in the county of Jefferson, West Virginia," approved December 15, 1868, not having paid for such property, and not being able to pay for the same, be allowed and required to surrender said property to the United States for resale.

SEC. 2. *Be it also enacted,* That where improvements have been made upon any of the aforesaid property, an appraisalment shall be taken of the value of such improvements, and two-thirds of such value shall be allowed to the owners by the United States in the resale of said property; and where an income shall have been derived from any property since its purchase as aforesaid, that income shall accrue to the United States: *Provided, always,* That the rentable value of the property at the time of transfer to said purchaser shall be made the basis of adjustment.

SEC. 3. *Be it further enacted,* That all lands, tenements, and water-privileges still in possession of the United States at or near Harper's Ferry, in the county of Jefferson, West Virginia, or which shall remain unpaid for after the passage of this act, shall be resold at an early day, and that the terms of sale shall be one-third cash, the balance in one and two years.

SEC. 4. *Be it further enacted,* That where the above-named conditions are complied with, all notes and bonds given to secure the payment of said purchases, and held by the United States, be restored to persons giving them, and that the sale of the property covered by such notes and bonds be declared null and void.

SEC. 5. *Be it also enacted,* That the Secretary of War be authorized to appoint three disinterested persons to make appraisements in accordance with the provisions of this act, and that he allow a reasonable compensation for such service, and also that he see that all of its provisions are enforced.

ORDNANCE OFFICE, December 5, 1871.

SIR: On November 30 and December 1, 1869, the lands, tenements, and water-privileges at Harper's Ferry, W. Va., belonging to this Department, were sold at auction, under the authority of the act of Congress of December 15, 1868. The sale was made, as directed by law, "on a credit of one and two years, taking bond and security from the purchaser or purchasers for the payment of the purchase-money."

Promissory notes, running respectively one and two years, and secured by bonds and sureties, were taken from purchasers at time of sale to secure payment of the purchase-money. The notes which fell due a year since remain, almost without exception, unpaid at the present time; and so with those which matured at the beginning of this month.

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As the collection and disbursement of the proceeds of this sale seem placed by the law under the exclusive control of the Secretary of War, I deem it proper at this time to invite your attention to the matter, and to ask your instructions.

If it is thought that suits should be entered upon these notes and bonds, they can be readily prepared for reference to the Department of Justice for that purpose.

Respectfully, your obedient servant,

A. B. DYER,
Chief of Ordnance, U. S. A.

The SECRETARY OF WAR.

[Indorsement on the foregoing.]

WAR DEPARTMENT, BUREAU OF MILITARY JUSTICE,
Washington, December 6, 1871.

Respectfully submitted.

The question raised by this reference is not one of law, but of administrative policy, and its determination would seem to belong exclusively to the Secretary of War. As it is to be inferred from the within communication that the collection of the claims mentioned can be enforced only by legal process, this Bureau, were its opinion desired on the subject, would not hesitate, in the absence of controlling reasons to the contrary, to recommend the prompt institution of suits on all the bonds and notes now due and unpaid.

J. HOLT,
Judge-Advocate-General.

[Amendment submitted to the Secretary of War by Daniel Ames.]

SEC. 2. *Be it further enacted*, That the Secretary of War is hereby authorized, in such cases as he shall think advisable, to accept of the surrender of property bought as aforesaid, and that he make such allowance for improvements thereon in the resale of said property as he shall deem just and equitable under the circumstances, and that he sell, at an early day, as provided in the aforesaid act, all such property, and all other property still owned by the United States, at and near Harper's Ferry, in the county of Jefferson, West Virginia, and that the terms of sale or of resale of the aforesaid property be one-third cash, the balance in one and two years: *Provided*, That nothing in any former act be so construed as to invalidate any of the provisions of this act.

[Indorsement on the foregoing.]

DECEMBER 11, 1871.

GENERAL DYER, *Chief of Ordnance*:

Please give Mr. Ames an interview on this subject.

W. W. BELKNAP.

SENATE CHAMBER, *December 20, 1871.*

DEAR SIR: I forward to you the petition of the Messrs. Ahl, purchasers of the ore royalty in lands near Harper's Ferry, W. Va., for an extension of the time of payment therefor.

They state their reasons for such application. They ask no deduction of price, nor any change of contract, but for some delay in payment, and such delay as, in your judgment, may be deemed reasonable or proper under the circumstances. If you have any power to accede to this and thus favor them, it will be a great matter to these gentlemen.

I know these gentlemen well, and feel interested in furthering their wishes.

If you can do anything for them in this respect, be pleased to advise me, so that they may know what is required.

Yours, truly,

WILLIAM T. HAMILTON.

Hon. W. W. BELKNAP.

WAR DEPARTMENT, *January 23, 1872.*

SIR: In reference to the petition of John S. Ahl & Co. for extension of time to pay claims due the United States for the purchase of Government property at Harper's Ferry, W. Va., I have the honor to inform you that the cases of others who are situated similarly to Mr. Ahl having been brought to the attention of the Department, Con-

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 25

gress has been recommended to allow all persons who purchased property at the auction sale at Harper's Ferry, under the act of December 15, 1863, to surrender the same within sixty days, and to authorize the Secretary of War to sell the property in such manner and at such times as he may elect; and until some action is taken upon this recommendation the Department would rather not consider any individual case.

Very respectfully, &c.,

W. W. BELKNAP,
Secretary of War.

Hon. W. T. HAMILTON, *United States Senator.*

SENATE CHAMBER, *December 23, 1871.*

SIR: I inclose Senate bill No. 67 for your consideration, and for an expression of the opinion of the Department as to the expediency of its being enacted, and with the proposed amendment attached to it.

Please return both with reply, and oblige,

Yours, respectfully,

H. WILSON.

Hon. W. W. BELKNAP, *Secretary of War.*

[Indorsement of Chief of Ordnance on the foregoing.]

ORDNANCE OFFICE, *January 2, 1872.*

Respectfully returned to the Secretary of War.

A bill granting authority to the Secretary of War to postpone, during such time as he may deem reasonable and proper, (not exceeding two years,) the enforced collection of the purchase-money due, or to become due, from the purchasers of the lots, houses, and water privileges, sold by virtue of the act approved December 15, 1863, does not seem to me to be objectionable.

Any act granting compensation to parties who made purchases at the auction sale of property made at Harper's Ferry on account of improvements, and allowing them to surrender the property purchased by them, would, in my opinion, be decidedly objectionable.

An act allowing all persons who purchased property at the auction sale at Harper's Ferry, under the act of December 15, 1863, to surrender the same within sixty days, and authorizing the Secretary of War to sell the property in such manner and at such times as he may elect, would, in my opinion, meet the necessities of the case.

A. B. DYER,
Chief of Ordnance.

WAR DEPARTMENT, *January 4, 1872.*

The Secretary of War has the honor to return to the Committee on Military Affairs of the United States Senate the proposed bill (S. No. 67) for the relief of the purchasers of lots, and houses and lots, at Harper's Ferry, sold by the United States, and to invite attention to the accompanying copy of a report of the Chief of Ordnance thereon, whose views are approved.

W. W. BELKNAP,
Secretary of War.

NEWVILLE, *December 6, 1871.*

We, the petitioners to this, would most respectfully ask for an extension of time on the claim due the Government for the purchase made at Harper's Ferry Government sale, November 30, 1869.

We purchased the ore royalty on lands in Jefferson County, Va., with the expectation that Harper's Ferry would be largely benefited by the change, and owing to the extraordinary flood in 1870, destroyed all prospects for at least two blast-furnaces and other machinery, which we expected to realize a large sale of our iron-ores. To that point we therefore ask you to grant us an extension of time so as to enable Congress to make the extension of time, and we will ever pray.

JOHN A. AHL,
D. V. AHL,
Of the Firm of John S. Ahl & Co.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

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HAGERSTOWN, *December 28, 1871.*

DEAR SIR: I transmitted you some days ago the petition of Mr. Ahl, asking that he may have some further time given to him for the payment of the royalty of ore-bank near Harper's Ferry, sold to the Mr. Ahls by the Government.

I did not receive a reply; neither did Mr. Ahl. As they are extremely anxious about it, would you be pleased to give it your attention, and you will much oblige,

WILLIAM T. HAMILTON.

Hon. W. W. BELKNAP.

[Indorsement on the foregoing.]

ORDNANCE OFFICE, *January 16, 1872.*

Respectfully returned to the Secretary of War, and attention respectfully invited to a letter from this office dated December 5, 1871, and to indorsement dated January 2, 1872, on Senate bill 67. In the latter it is suggested that "an act allowing all persons who purchased property at the auction sale at Harper's Ferry under the act of December 15, 1868, to surrender the same within sixty days, and authorizing the Secretary of War to sell the property in such manner and at such times as he may elect, would, in my opinion, meet the necessities of the case."

Letter of December 22, 1871, herewith returned.

S. V. BENÉT,

Major of Ordnance, in Charge.

UNITED STATES SENATE CHAMBER,

Washington, March 22, 1872.

DEAR SIR: In 1868 or 1869 the Government sold water-power, &c., at Harper's Ferry, W. Va. Many citizens bought houses and lots at large prices, believing that the water-power was to be at once improved; and to this time, I am told, no move toward improvement has been made, nor no part of the purchase-money paid. Our people think something should be done—property paid for or given up. The citizens who bought houses and lots think they ought to be allowed longer time to pay up, and that the parties who bought water-power should pay or give up.

Please give me your opinion; also, what has or will be done.

Very respectfully,

H. G. DAVIS.

Hon. W. W. BELKNAP, *Secretary of War.*

[Indorsement of Chief of Ordnance on foregoing.]

Respectfully returned to the Secretary of War, and his attention invited to a letter from this office, dated December 5, 1871, and to indorsement of January 2, 1872, on Senate bill 67, which gives a full history of the transaction, with the recommendation of this office.

The views therein expressed are still entertained by this Bureau.

By order of the Chief of Ordnance.

S. V. BENÉT,

Major of Ordnance.

ORDNANCE OFFICE *March 28, 1872.*

WAR DEPARTMENT, *April 3, 1872.*

SIR: I am in receipt of your letter of the 22d ultimo in relation to the sale of certain Government property at Harper's Ferry, and inquiring in regard to the same. In reply I send you herewith copies of reports of the Ordnance Bureau, and also a copy of a letter from this Department to the Committee on Military Affairs of the Senate, which papers show the action thus far taken and the views of the Department on this subject.

Very respectfully, your obedient servant,

WM. W. BELKNAP,

Secretary of War.

Hon. H. G. DAVIS, *United States Senator.*

HOUSE OF REPRESENTATIVES, COMMITTEE ON MILITARY AFFAIRS,

Washington, D. C., April 24, 1872.

SIR: I have the honor to request that you will furnish this committee with full information respecting the recent sale of property belonging to the United States at Harper's Ferry, W. Va. A description of the property is desired, and also a statement

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of the price and terms on which it was sold. This information is required in order to enable the committee to act intelligently upon a bill which has lately passed the Senate authorizing an extension of the time of payment for property sold, other than the water-power, and also authorizing the canceling of the contracts of purchasers who do not desire to fulfill the same.

Very respectfully, your obedient servant,

JOHN COBURN, *Chairman.*

Hon. W. W. BELKNAP,
Secretary of War.

[Indorsement on the foregoing.]

ORDNANCE OFFICE, *May 2, 1872.*

Respectfully returned to the Secretary of War, with the following papers, which are thought to give all necessary information respecting the sale of property at Harper's Ferry, W. Va., in 1869.

1. Copy of the abstract of sale, giving descriptions of property, names of purchasers, and amounts of purchase-money in each case, whether paid or still outstanding.

2. Copy of the bond and promissory notes given by purchasers under the law for deferred payments.

3. Copy of deed given upon payment of purchase-money in each case.

4. Photographic copy of map of Harper's Ferry, showing metes and bounds of lots.

By order of the Chief of Ordnance.

S. V. BENET,
Major of Ordnance.

The Secretary of War has the honor to submit to the House of Representatives, in compliance with a request of the Committee on Military Affairs, such information relating to the Government property at Harper's Ferry as has a bearing upon the recent sale thereof.

WM. W. BELKNAP,
Secretary of War.

WAR DEPARTMENT, *May 2, 1872.*

HARPER'S FERRY, W. VA., *June 15, 1872.*

SIR: Allow me, if you please, with great respect to call your attention to the following case:

I have been employed by the "Harper's Ferry Water Manufacturing Company," purchasers of the United States Government privileges, in November, 1869, at the public sale thereof then made, as the custodian and keeper of the property of the said company, as day and night watchman of the premises, from the 1st of January, 1870, until the present time.

The company paid me for my services for five months thereafter at \$45 per month, which I duly received. Since then I have done the same work at \$40 per month, making two years up to the 1st June, 1872, for which I have received pay up to the 1st September, 1872; and there is now due me on the 1st June inst., \$360, less \$136 since paid to me—\$224. The \$136 I have received was collected at an expense to me of \$20 for transportation and traveling expenses to Washington to obtain it. So that they owed me in all equity, \$224 on the 1st June inst.

I address this note to you now in the hope and trust that you will so order it by communication with the purchasers and the company that my services will be promptly paid for, to me.

The attachment of the interest of the company in this purchase will afford me ample security for the ultimate payment of my debt against it; but I am disinclined, from many reasons, to a litigation, although the company has regarded my claim, so persistently in refusing to pay it, an acknowledged debt; and, therefore, I have great cause of complaint against it outside of my just demand.

Will you now, my dear sir, communicate with this company, who you doubtless know, and represent my wants in this respect, and do me the kindness to answer my appeal to you therefor, at your earliest convenience?

Until then I will forbear to sue out my attachment at law to enforce my claim against the interests of the company in this real estate, whatever it may prove to be.

With great respect, your obedient servant,

JOHN A. LASHORN.

Hon. W. W. BELKNAP,
Secretary of War, Washington City, D. C.

HARPER'S FERRY, W. VA., July 5, 1872.

We, the corporate authorities of Harper's Ferry, W. Va., do most respectfully and earnestly pray you to place at the disposal of the town lot 2, block B, together with the brick house located thereon, to be used by said town for a town-house, school-house, jail, station-house, or otherwise, as may best serve their purposes.

In support of this request we urge the following considerations, to wit: We have now not a single school-house standing within the limits of the corporation for the use of white children.

Two of our school-houses were pulled down during the war by the United States soldiers, and the bricks, after being used in the camps, were sold by the United States ordnance officer here, and the proceeds put into the United States Treasury; while the third and only remaining one, after having been used almost constantly for a hospital and greatly damaged, was repaired at the expense of the town only to be entirely demolished by the great flood of October 1, 1870.

We have neither town-house nor jail, the jail also having been destroyed during the war.

No compensation whatever has ever been obtained by the town for the use, damage, or destruction of its public buildings, while, thus far, three of its churches have been aided in making repairs of their houses.

A house and lot had been assigned to the use of the town prior to the sale in 1869, but at that time it was taken and sold with other property, while four of the best buildings, with ample lots, were donated by the United States to the Stover College, for the benefit of colored people.

The building and grounds for the use of which your petitioners ask have not yet passed out of the possession of the United States Government, they having been bid off, but not taken, at the sale of 1869; and, under all of the circumstances, are of but little if any value to the United States, the rent being absorbed by repairs and in the care of the building.

The stagnation of business caused by the continued withholding of all the property formerly owned by the United States, and of which it still holds the titles, alike from taxation and improvement, by discouraging enterprise and depreciating values, is making it more and more difficult to supply these public necessities.

In view of these facts, your petitioners are confident that you will not hesitate to grant their request and order this property turned over to them.

In behalf of the town of Harper's Ferry,

DANIEL AMES, *Mayor*.
JOHN L. SCHIELLING, *Recorder*.
BASIL AVIS.
WILLIAM EXNER.
J. J. KERN.
JOHN A. MCCREIGHT.
T. W. POTTERFIELD.

Hon. W. W. BELKNAP,
Secretary of War, Washington, D. C.

[First indorsement on the foregoing.]

The Secretary of War has no authority to lease this property. Refer this to the Chief of Ordnance for his opinion as to this property, as the town authorities will probably appeal to Congress.

W. W. BELKNAP.

JULY 12, 1872.

[Indorsement of Chief of Ordnance on the foregoing.]

ORDNANCE OFFICE, July 13, 1872.

Respectfully returned to the Secretary of War.

There is no authority of law known to this Bureau for renting such property; but under the last Army Regulations, approved by Congress, (and the practice of this Department for fully a half a century, based upon the necessities of the case,) buildings at Harper's Ferry Armory have been rented.

There are now but two buildings at that place in the possession of this Bureau, and they are both rented. The one within applied for is occupied by three parties, one of which—Koonce—owes for fourteen months' rent, amounting to \$56.

This Bureau recommends that the portion of the building occupied by Koonce and the unoccupied rooms be loaned to the corporate authorities of Harper's Ferry on con-

dition that they keep them in repair and turn them over to this Department at once on application.

By order of the Chief of Ordnance.

S. V. BENÉT,
Major of Ordnance.

Approved by the Secretary of War, provided the corporate authorities sign an agreement as recommended in the last paragraph of foregoing report of the Chief of Ordnance.

JULY 15, 1872.

H. T. CROSBY,
Acting Chief Clerk.

ORDNANCE OFFICE, WAR DEPARTMENT, July 16, 1872.

SIR: By direction of the Secretary of War you are authorized to loan to the corporate authorities of Harper's Ferry that portion of the building occupied by Koonce, and also any unoccupied rooms, if any, in the same building, provided they sign an agreement binding themselves to keep the property in repair, and turn it over to the Department at once on application.

By order of the Chief of Ordnance.

Respectfully, your obedient servant,

S. V. BENÉT,
Major of Ordnance.

Mr. ZADOC BUTT, *Ordnance Agent, Harper's Ferry, W. Va.*

HARPER'S FERRY, W. VA., July 17, 1872.

DEAR SIR: The paper intrusted to my care ordering Mr. Butts to turn over to the corporate authorities of Harper's Ferry the room occupied by Mr. John Koonce, and also any unoccupied room in the brick house located on lot 2 in block B, was placed in the hands of Mr. Butts this morning.

Believing it to be the design of the Ordnance Office to place at our disposal any room in said house not now under rent, we beg leave to inform you that Mr. Butts objects to letting us have the back room on the lower floor, now occupied free of rent by Mr. Kitzmiller, on the plea that he has reserved it for the use of the Government whenever it sees fit to send its officers here. Mr. Butts also claims that he wants it for an office.

As this is the only room on the first floor that is not rented, and as the room on the first floor is quite desirable for the use of the council, we would suggest that any use which Mr. Butts might wish to make of the room would not be likely to interfere with our occupancy, and that whenever the Government may need any or all of the room which may be occupied by the corporate authorities it will be immediately placed at its disposal. Hoping that you will be able to give us one room at least on the first floor of said building,

I am, very respectfully,

DANIEL AMES,
Mayor of Harper's Ferry.

Col. S. V. BENÉT, *Acting Chief of Ordnance.*

HARPER'S FERRY, W. VA., July 17, 1872.

MAJOR: I am to acknowledge the receipt of your letter of the 16th inst., by Mr. Ames, instructing me as to the rooms in house No. 1, occupied by Mr. John Koonce, and authorizing me to loan them to the corporate authorities at Harper's Ferry, under certain conditions, as well, also, the unoccupied rooms, if any.

I had given Mr. Koonce written notice to surrender possession of his part of the house on the 1st of August prox., and to pay the rent in arrear—15 months from 1st May, 1871, to that date, @ \$4 p. mo., \$60.

Since receiving your letter of the 16th inst., I have had an interview with him, and read to him my instructions therein. He says he will vacate the rooms as required.

There are no other unoccupied rooms in the building. I declined to rent the back corner room on the first floor, preferring to reserve it for a place of business where I could do the writing of my agency and receive any officers of the Government who might come to the place on business with me or for the Government. This room is now occupied by myself and papers, and A. M. Kitzmiller, a lawyer once connected with the armory here whose assistance to me in ordinary matters and his daily watch-

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ful care of the property I hold equivalent to and in full satisfaction for his personal occupation of the room. I will not like to give up this room for any other public purpose.

I am not very well informed whether or not it is designed by the corporate authorities to use this or any other portion of the building, which consists of five (5) rooms and cellar, now occupied by Koonce, for a corporation prison as well as for council-chambers.

* * * * *
With great respect, your obedient servant,

ZADOK BUTT, *Agent*.

Maj. S. V. BENÉT, *Chief of Ordnance, Washington, D. C.*

ORDNANCE OFFICE, *July 18, 1872.*

SIR: In reply to your letter of the 17th instant, I have to state that the orders of the Secretary of War included all the rooms of the building not occupied by tenants paying rent therefor to the Government; and under this construction the room referred to must necessarily be turned over to the city authorities. The duties devolving on you as agent of the Department would not warrant this office in asking that a room be set aside for your use as an office. * * *

By order of the Chief of Ordnance.

Respectfully, your obedient servant,

S. V. BENÉT,
Major of Ordnance.

Mr. ZADOK BUTT, *Ordnance Agent, Harper's Ferry, W. Va.*

ORDNANCE OFFICE, *July 15, 1872.*

SIR: Referring to the letter of this Bureau of December 5, 1871, relating to the sale of the lands, tenements, and water-privileges at Harper's Ferry in 1869, herewith inclosed, and to the indorsement of the Judge-Advocate-General of the Army, of December 6, 1871, on the subject, I have the honor to submit the following remarks and recommendations:

The principal purchase at the sale at Harper's Ferry, W. Va., in 1869, was the water-powers on the Shenandoah and Potomac Rivers, bought by F. C. Adams for \$206,000.

Besides this, there were some eighty or more purchases of small lots in the town of Harper's Ferry, amounting to about \$90,000. The notes and bonds given under the law for these purchases remain, with a few exceptions, unliquidated at this time, notwithstanding the limitation of credit expired by law in December last.

It is known to this Bureau that the apathy of the small purchasers is induced in a great measure by the failure of the principal buyer to complete his purchase of the water-powers. A settlement for these water-powers, it is believed, would result in a speedy settlement of all the minor sales.

I have, therefore, inclosed herewith the original notes and bonds of the purchaser, F. C. Adams, (together with a copy of the notification sent him and his sureties, in November last, from this office,) and would recommend that they be referred to the Department of Justice, with the request that suit be immediately commenced on the same.

By order of the Chief of Ordnance.

Very respectfully, your obedient servant,

S. V. BENÉT,
Major of Ordnance.

Hon. SECRETARY OF WAR.

WAR DEPARTMENT, *July 20, 1872.*

SIR: I have the honor to transmit to you herewith the original notes and the bonds executed by F. C. Adams to secure to the United States the sum of two hundred and six thousand dollars, purchase-money for the water-powers on the Shenandoah and Potomac Rivers, sold to him by the Government in 1869, together with a copy of the notifications sent him and his sureties to pay the notes, which would become due in December last, without satisfactory result.

Mr. Adams has, up to this date, failed to complete his purchase of the water-powers: and it is believed that the neglect of many smaller purchasers of public property at the same sale to fulfill their obligations is due to his example.

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I have therefore the honor to request that suit be immediately commenced on the notes and bonds referred to.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

To the honorable the ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE, *Washington, July 23, 1872.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, and the accompanying notes and bonds, executed by F. C. Adams, to secure to the United States the sum of \$205,000, purchase-money for the water-powers on the Shenandoah and Potomac Rivers, sold to him by the Government in 1869.

In compliance with your request, I have transmitted a copy of your letter, and the papers referred to, to the United States attorney for this district, with instructions to at once institute proceedings against said Adams and his sureties for the recovery of the amount due to the Government for the purchase of said property.

I have the honor to be, your obedient servant,

GEO. H. WILLIAMS,
Attorney-General.

Hon. W. W. BELKNAP, *Secretary of War.*

WASHINGTON, *August 2, 1873.*

MY DEAR GENERAL: I must apologize for trespassing upon your holiday with a matter of business, but as it concerns me somewhat personally, hope you will excuse me. I have been notified that the Harper's Ferry bonds have been ordered to be put in suit at once, and the district attorney is now engaged preparing for the proceeding. I have seen the Secretary, who declines to delay matters, unless, indeed, you will advise that course. At the Ordnance Bureau they tell me that you carefully considered the matter before advising suit, and that such action will have to go on. I inclose you a copy of a bill passed the Senate and now pending in the House, because I am in hopes that you never saw it in this shape and will agree to give us next session to urge our application for relief. You will see that the second section, which was put on in the Senate, provides that we may, under certain circumstances, surrender the property, &c., and force resale. It seems to me under such circumstances it would be doing no harm to any one to give us the time we ask. I hope you may see it in the same light, for I don't want to be sued if I can help it. Please return me the inclosed.

With kindest regards, yours truly,

W. B. WEBB.

NARRAGANSETT PIER, *August 5, 1872.*

DEAR SIR: Your letter of 2d inst., and copy of Senate bill 67, Forty-second Congress, first session, has been received.

The bill is "for the relief of the purchasers of lots, and houses and lots, sold," &c., and not for the relief of the "water privileges," which are excepted in terms by the first section. The second section seems to be general in its provisions, and, in the discretion of the Secretary of War, (not mandatory,) permits the "surrender" of the property, &c.

As this bill passed the Senate March 27, and Congress continued in session several months thereafter without action on the part of the House, it is hardly to be expected that during the next *short* session the bill will become a law.

Payments on the purchases should have been made last December by the terms of the law under which the sale was effected. As an act of grace toward the purchasers, especially the citizens of Harper's Ferry, who had invested liberally on the supposition and belief that the water power would be developed and the prosperity of the town increased so as to enable them more readily to meet their payments, the Ordnance Bureau deferred action in the matter, although two years had elapsed since the date of sale, that Congress might afford such relief as the case required. Congress having taken no action in their behalf, the course to be pursued by the Bureau under the law was plain, and that was, to place the whole matter in the hands of the Department of Justice for legal action.

Being entirely satisfied in my own mind that the Ordnance Bureau could not proceed otherwise than it has done under the law, I regret exceedingly that, in justice to the

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interests of the United States, I cannot recommend any change in the views expressed by the Bureau. The copy of the bill is herewith returned.

Yours, very truly,

S. V. BENÉT,
Major of Ordnance.

Mr. WM. B. WEBB, *Washington, D. C.*

Whereas the United States of America has agreed with the corporate authorities of the town of Harper's Ferry, in the County of Jefferson, in the State of West Virginia, "to loan to the said corporate authorities that portion of the building occupied by John Koonce, and the unoccupied rooms, if any, in the same building, provided they sign an agreement binding themselves to keep the property in repair and to turn it over to the Department (Ordnance) at once, on application:"

Now, be it remembered, that we, Daniel Ames, mayor, and John A. Schilling, recorder, duly elected and qualified as such, and empowered to enter into such an agreement as above named in our corporate capacity, for ourselves, and our successors in office, do, by our signatures hereto, consent to the terms above named, and which are the same contained in an official letter from Major S. V. Benét, Chief of Ordnance, to Zadok Butt, ordnance agent, Harper's Ferry, W. Va., dated July 16, 1872, which have been duly accepted by the town council of said corporation.

For further particulars, it is herein stated that the building referred to is No. 1 of the unsold houses at Harper's Ferry, and that for the above-named loan, no rent or assessment is to be charged against said corporation, other than the covenant above named, to keep it in repair.

Witness our hands and seals this 17th day of August, 1872.

DANIEL AMES, *Mayor.* [L. S.]
JOHN L. SCHILLING, *Recorder.* [L. S.]

Approved by order.

ZADOK BUTT,
Ordnance Agent.

UNITED STATES SENATE-CHAMBER,
Washington, December 16, 1872.

DEAR SIR: Please inform me the amount the Government property at Harper's Ferry was sold for at sale, separating the water-power, &c., from the houses and lots.

How much, if any, has been paid?

Yours, with great respect,

H. G. DAVIS.

Hon. W. W. BELKNAP, *Secretary of War.*

[Indorsement of Chief of Ordnance.]

ORDNANCE OFFICE, *December 20, 1872,*

Respectfully returned to the Secretary of War with the following memorandum of sale of Harper's Ferry property, viz:

Water-power on Potomac sold for.....	\$176,000 00
Water-power on Shenandoah sold for.....	30,000 00
Shenandoah Ferry sold for.....	1,790 00
Wood-tract sold for.....	3,600 00
Ore-bed sold for.....	13,100 00
Dwellings, lots, &c., sold for.....	73,303 50

297,793 50

The sum of \$4,048.50 has been received in payment for dwellings and lots sold.

By order of the Chief of Ordnance.

S. V. BENÉT,
Major of Ordnance.

WAR DEPARTMENT, *December 23, 1872.*

SIR: In answer to your inquiry of the 16th instant, how much was realized from the

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 33

sale of Government property at Harper's Ferry, W. Va., and how much, if any, money has been paid, I have the honor to state that the

Water-power on the Potomac sold for.....	\$176,000 00
Water-power on the Shenandoah sold for.....	30,000 00
Shenandoah Ferry sold for.....	1,790 00
Wood tract sold for.....	3,600 00
Ore bed sold for.....	13,100 00
Dwellings, lots, &c., sold for.....	73,303 50

297,793 50

The sum of \$4,048.50 has been received in payment for dwellings and lots sold.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

Hon. H. G. DAVIS, *U. S. Senator.*

1410 G STREET, WASHINGTON, D. C., *December 19, 1872.*

SIR: I have the honor to inform you that the rooms occupied by Mrs. Markwood in the Government house located on lot 2, block B, Shenandoah street, Harper's Ferry, W. Va., embracing all of the balance of the house not occupied by the corporate authorities of said town, except one room heretofore rented by Dr. Kessler, have been vacated by Mrs. Markwood. You are therefore respectfully requested, in accordance with a previous order issued by you, to direct Mr. Z. Butt, your agent in said town, to turn over the said rooms to the corporate authorities of Harper's Ferry, W. Va.

In behalf of said authorities.

DANIEL AMES, *Mayor.*

CHIEF OF ORDNANCE, *Washington, D. C.*

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, December 19, 1872.

SIR: You are authorized and directed to turn over to the corporate authorities of Harper's Ferry, on the conditions stated in my letter of July 16, 1872, the rooms lately occupied by Mrs. Markwood, in the building on lot 2, block B, Shenandoah street.

By order of the Chief of Ordnance,
Respectfully, &c.,

S. V. BENÉT,
Major of Ordnance.

Mr. ZADOK BUTT,
Ordnance Agent, Harper's Ferry, W. Va.

HARPER'S FERRY, W. VA., *December 23, 1872.*

DEAR SIR: I received your letter of the 19th, instructing me to turn over the rooms in house No. 1, occupied by Mrs. Margnett, to the corporation of Harper's Ferry. In reply permit me to explain how the matter stands, and ask further instructions on the subject.

About September, 1870, I rented to Dr. A. M. Kessler the room that had been occupied by Captain Young as an office. He was then a single man; but some eight months ago he got married. Having but the one room, Mrs. Margnett let him have one or two of her rooms, she having a small family. Some two weeks ago she sent for me and told me that she had concluded to board with her sister this winter, for the reasons that her two sons were employed in the night telegraph office, and owing to noise from the school they could not get any sleep in the day. She requested that she be permitted to put a part of her property in one of the rooms till spring; and as Dr. Kessler already occupied a part of her house, I rented the whole of her part of the house to him, and with the understanding that he was to vacate the room which he rented from me on the 1st of January. That room I can turn over at that time, and if the Department desires that the whole of the house be turned over, you will please inform me, and I will notify the tenant to vacate the house at once, as those houses have been rented with the understanding that they are to be surrendered when the Government requires them, by giving the tenant a reasonable notice, and the rent to be paid at the end of each month, or leave the house at once. So if the house is required, one or two months

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notice, I presume, would be sufficient time to suit themselves in getting a house; but I believe where a tenant pays his rent it might perhaps require three months in law. So if you have been informed that the house had been vacated it is certainly a mistake; but I was informed to-day that Ames called on Mrs. Margnett before he left for Washington, and requested her to rent his house; also offered the doctor a part of the same house. So the whole subject is before you, and I shall act as you may direct: but, as I stated before, one room will be vacant the 1st of January and will be turned over.

Respectfully, &c.,

ZADOK BUTT, *Agent*.

Maj. S. V. BENÉT,
Chief of Ordnance, Washington City, D. C.

ORDNANCE OFFICE, WAR DEPARTMENT,
Washington, January 3, 1873.

SIR: In reply to your letter of the 23d ultimo I have to inform you that it is not the intention of this Department to re-let, as they become vacant, any of the rooms in the building referred to. You will therefore be pleased to comply with the instructions from this Office of the 19th ultimo, and turn over the rooms lately occupied by Mrs. Margnett to the corporate authorities of Harper's Ferry. You will also turn over, when vacated, any other rooms in the same building.

By order of the Chief of Ordnance.

Respectfully, &c.,

S. V. BENÉT,
Major of Ordnance.

ZADOK BUTT,
Ordnance Agent, Harper's Ferry, W. Va.

HARPER'S FERRY, W. VA., *March 24, 1873.*

SIR: I beg to inform you that I am in charge of the late armory property at this place. Before the property was sold to the Harper's Ferry Water-Power Company I was employed to protect and guard the property by Captain D. J. Young, O. S. K., United States Army, and when the property went into the hands of the company they retained me on the same terms which I had served the Government under Captain Young. They paid me for my services up to the 1st of January, 1873, at which time they wrote to me in the following words:

"The Government has sued us, and, as we have no title to the property, I don't think we need trouble ourselves about it any further. From appearances I don't see how you are going to get your pay, unless the Government takes charge and pays you."

When I received the letter containing the above words, I concluded to relinquish my charge of the property. I did so, and in less than five days thereafter the armory yard was entered by boys, and a very valuable iron pipe, about one hundred and fifty feet in length, was broken up and the lead taken from around the joints. I was informed of the fact, and I immediately resumed charge, believing then, as I do now, that the Government would reward me for my services in protecting their interest in this property. The Government holding a vendor's lien on the property, of course has equally the same interest which it held before the sale. The property being in litigation, I considered that I would be sustained by your Department in protecting the same, as I had served the Government three years in the same capacity under Captain Young. I can assure you, that had I abandoned the property, that by this time irreparable injury would have been done to it, as it is an easy matter to break the large water-wheels to get the lead and brass from around the journals.

Since the 1st of January I have rendered the Government valuable service, and have received no pay; and as you have control of the matter, if you will consent to indorse my services for payment (unofficially) I will continue in charge until the matter is finally settled.

I wrote the honorable Attorney-General on the subject, and inclose for your perusal the reply which he sent me. As I have a family dependent on me for support, unless I receive some encouragement I will be compelled to look elsewhere for employment.

Be pleased to inform me what I am authorized to do in the matter, and oblige

Your obedient servant,

JOHN A. LASHORN.

Hon. WM. W. BELKNAP,
Secretary of War, Washington, D. C.

SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY. 35

[Inclosure to foregoing letter.]

DEPARTMENT OF JUSTICE,
Washington, March 20, 1873.

SIR: I have received your letter of the 18th instant, and in reply have to inform you that there is no fund under my control out of which I can pay you for your services in guarding the property at Harper's Ferry.

I will suggest that you correspond with the Secretary of War upon the subject.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

JOHN A. LASHORN, Esq., *Harper's Ferry, W. Va.*

HAGERSTOWN, *April 5, 1873.*

DEAR SIR: The House at the last session failed to pass the bill passed by the Senate in relation to the purchasing of property at Harper's Ferry.

The Messrs. Ahl are interested as purchasers of some of it, and of course feel anxious as to what course the Department will now pursue; whether it will now demand payment or wait until the next session of Congress for whatever legislation may be proper and necessary.

The Messrs. Ahl do not desire to be in any jeopardy about their contract, and are willing at any time to comply if required by the payment of the money; but, if the whole subject is to be laid over for legislation, they are willing that it should be only so that they are not injured by the impairment of the contract heretofore made. Be pleased to let me know what the Department intends to do in the premises.

Yours, sincerely,

WILLIAM T. HAMILTON.

Hon. WM. W. BELKNAP, *Secretary of War.*

WAR DEPARTMENT,
Washington City, May 5, 1873.

SIR: In reply to your letter of the 5th instant, inquiring as to the intention of the Department relative to the purchasers of the Harper's Ferry property, I have the honor to inform you that, as Congress failed to perfect any legislation authorizing further delay in settling for this property, it is presumed the Department of Justice will push the suit now pending against the purchasers to a speedy termination. It is the intention of this Department to press all purchasers to a speedy settlement.

The Messrs. Ahl can avoid the contingency of a suit by paying up at once.

Very respectfully, your obedient servant,

GEO. M. ROBESON,
Acting Secretary of War.

Hon. W. T. HAMILTON, *U. S. S., Hagerstown, Md.*

HAGERSTOWN, *May 13, 1873.*

DEAR SIR: Your favor I received. The Messrs. Ahl ask that you be pleased to allow them this month to pay the claim against them. Would you be pleased to make out the amount due the Government by John S. Ahl & Co., and send it to them at Newville, Cumberland County, Pa., or to me?

Yours, sincerely,

WILLIAM T. HAMILTON.

Hon. W. W. BELKNAP, *Secretary of War.*

WAR DEPARTMENT, *Washington, May 23, 1873.*

SIR: I have the honor to say in reply to your note of the 13th instant, relative to the indebtedness of John S. Ahl & Co. for property purchased from the Government at Harper's Ferry, that the Department holds two notes of the Messrs. Ahl, dated December 6, 1869, and running for one and two years, respectively, each for \$6,550. When these notes matured the Messrs. Ahl were duly notified of the fact.

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The amount of the notes, with interest at 6 per cent. from day of maturity to day of deposit, may be deposited with the nearest assistant treasurer or designated depositary, to the credit of the Treasurer of the United States, and the original certificate of deposit forwarded to this Department, when proper credit will be given and a deed of the property purchased be furnished in accordance with the provisions of the law.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

Hon. W. T. HAMILTON, *U. S. S., Hagerstown, Md.*

HARPER'S FERRY, W. VA., May 1, 1873.

SIR: During the latter part of the month of March I addressed a letter to the honorable Secretary of War, with an inclosure from the honorable Attorney-General, in reference to my "pay" for services rendered the Government in the care and protection of the late "armory property" at this place. I am anxious to have the matter settled, and to know from the Secretary of War whether I must abandon the property to the mercy of such trespassers who choose to commit depredations thereon, or whether I am warranted in continuing in charge of the property. Will you please inform me whether my letter was referred to the Secretary, or what disposition was made of the same? If you have not presented it for his consideration, please do so as soon as he returns, and inform me of the result. This is a matter of interest to both the War Department and myself.

Hoping that you may give the matter your early attention, I remain, &c.,

JOHN A. LASHORN.

Hon. H. T. CROSBY,

Chief Clerk, War Department, Washington, D. C.

HARPER'S FERRY, W. VA., May 23, 1873.

DEAR SIR: In the month of March I wrote you in reference to the condition of the "armory property" at this place, and informed you that I had protected the same, and asking your advice as to whether I should continue to protect the property. I also sent you a letter which I had received from the Attorney-General on the subject.

Will you please take up those letters and write me your views? By so doing you will oblige, truly, &c.,

JOHN A. LASHORN.

Hon. WM. W. BELKNAP, *Secretary of War.*

HARPER'S FERRY, W. VA., July 15, 1873.

MAJOR: I beg to inform you that since the 1st of January last I have been guarding and protecting the late "armory property" at this place. I have rendered this service solely on my own responsibility, believing then, as I now believe, that the War Department will indorse my action and pay me for my services when the questions concerning the property are settled. I am now compelled to look elsewhere for employment, and, as I have secured employment at the Springfield armory, I must relinquish my charge of the property at this place. I take this means of notifying you, in order that you may take such steps as you think best in the matter which may lead to its protection in the future, for I can assure you that unless something is done to protect this property the Government must lose heavily thereby, as parties will enter and destroy the wheels for the purpose of getting lead and brass from around them. When this matter is settled I shall ask for compensation for my services, as I am fully prepared to prove that my action in taking charge of this property has been of great service to the Government.

Very respectfully, yours,

JOHN A. LASHORN.

Maj. S. V. BENÉT,

Chief of Ordnance, Washington, D. C.

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[Senate Ex. Doc. No. 48, 43d Congress, 1st session.]

Letter of the Attorney-General, transmitting, in compliance with a Senate resolution of January 21, 1874, information relative to the sale of Government property at Harper's Ferry. May 7, 1874, referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, May 6, 1874.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate bearing date the 21st of January last, as follows:

"Resolved, That the Attorney-General of the United States be directed to furnish the Senate, at as early a day as practicable, a statement of all the information in his Office relative to the sale of the Government property at Harper's Ferry, W. Va., and all suits in relation to said property, whether for purchase-money or otherwise."

In compliance therewith I transmit copies of all the correspondence upon the files and records of this Department in relation to the sale of the Government property at Harper's Ferry.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. M. H. CARPENTER,
President pro. tem. United States Senate.

SENATE OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
Washington, January 19, 1874.

SIR: I have the honor to inclose herewith copy of a resolution in relation to the sale of Government property at Harper's Ferry, which was introduced in the Senate by the Hon. Mr. Davis, of West Virginia, and on my motion referred to the Committee on the Judiciary, on the 16th instant.

I will thank you to send to the committee at as early a day as practicable such information or suggestions as you may think proper as to the propriety of your Department making answer to the resolution.

Very respectfully,

GEORGE F. EDMUNDS,
Chairman.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

IN THE SENATE OF THE UNITED STATES,
January 21, 1874.

Resolved, That the Attorney-General of the United States be directed to furnish the Senate, at as early a day as practicable, a statement of all the information in his Office relative to the sale of the Government property at Harper's Ferry, W. Va., and all suits in relation to said property, whether for purchase-money or otherwise.

Attest:

GEORGE C. GORHAM,
Secretary.

DEPARTMENT OF JUSTICE,
Washington, January 20, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, in reference to a Senate resolution, asking me to furnish the Senate, at as early a day as practicable, a detailed statement of all the information in this Office relative to the sale of the Government property at Harper's Ferry, and all suits in relation to said property, whether for purchase-money or otherwise.

Application of a like nature was made to me some time ago by Senator Davis, and I called upon the district attorney of this District to furnish me with such information as he had upon the subject, as the papers were placed in his hands for the purpose of taking the necessary steps to collect what was claimed by the United States on account of the sale of such property. When the bonds given by the purchasers were placed in the hands of the district attorney, it appears that they were disposed to defend on the ground that a part of the property purchased belonged to the Baltimore and Ohio

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Railroad Company, and I was also advised by the district attorney that the persons upon the bond, in case judgment should be obtained, were not responsible for more than an inconsiderable part of the amount claimed. According to the arrangement made at the time of the sale, a vendor's lien upon the property was preserved, and it occurred to me that the best course to be taken for the United States was to file a bill to enforce that lien upon the property, bringing the Baltimore and Ohio Railroad Company into court, so that the exact rights of the United States could be ascertained, and after the property was sold under that decree to hold the purchasers responsible for any loss sustained by the United States in consequence of their failure to pay the purchase-money if it should appear that any such loss is sustained. District Attorney Fisher's letter gives a more particular statement of what has been done in respect to those matters.

I know of nothing in the proceedings rendering it improper for me to answer the resolution of the Senate, and if any copies of papers or other information not contained in Mr. Fisher's letter are desired, please advise me.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. GEORGE F. EDMUNDS,
Chairman Judiciary Committee, United States Senate.

UNITED STATES SENATE-CHAMBER,
Washington, December 17, 1872.

DEAR SIR: The War Department informs me that the papers and claim of Government against Adams and others for property bought at the Harper's Ferry, W. Va., Government sale, has been referred to your Office, with a view to force collection of purchase-money.

Please inform me what has been done; how long it will probably take to force the collection; who are the principals and who bondsmen; what is the amount, &c.

I am informed that the part of the property, such as iron pipes, castings, &c., are now being sold by the person in charge.

The people of Harper's Ferry are deeply interested, and are inquiring of me, as one of their Senators, what is likely to be done.

Yours, respectfully,

H. G. DAVIS,
West Virginia.

Hon. G. H. WILLIAMS,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, December 19, 1872.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant relative to the claim of the Government against F. C. Adams and others for the amount due by them for the purchase of the property at Harper's Ferry.

In reply I have to inform you that, at the request of the Secretary of War, on the 23d of July last, I transmitted all the papers in the case to the United States attorney for this District, with instructions to bring suit against said Adams and his sureties. I have this day directed the district attorney to report to me the progress of this suit; and, as soon as I shall hear from him, I will advise you.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. H. G. DAVIS,
United States Senate.

WAR DEPARTMENT,
Washington City, January 6, 1873.

SIR: I have the honor to refer herewith for your consideration a communication from S. V. Yantis, reporting the removal of iron, &c., from the armory property at Harper's Ferry by certain parties, and a report from the ordnance agent in charge of the armory in relation thereto; in view of which it is requested that such measures be instituted by the Department of Justice as may be necessary to protect this public property from further removal.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Digitized by Secretary of War.

The Hon. ATTORNEY-GENERAL.

HARPER'S FERRY, December 14, 1872.

DEAR SIR: The party in charge of what is left of the armory property at this place is engaged in tearing out window-frames of buildings and digging up iron pipe and breaking them up for the purpose of selling it. He says he is doing it by the orders of the gentlemen who composed the company who purchased the property from the Government. My object in writing is, if possible, to put a stop to the future destruction of this property, and by parties who, from what I learn, have not paid one cent of the purchase-money.

From what the parties say who are engaged in this work, it is intended to make a clean sweep of everything salable. Give this matter your prompt attention for the sake of our much-abused town.

I am yours, respectfully,

S. V. YANTIS.

Hon. H. G. DAVIS,
Washington.

[Indorsements.]

DECEMBER 16, 1872.

Respectfully referred to the Secretary of War.

With great respect,

H. G. DAVIS.

War Department. Received December 17, 1872.

Hon. H. G. Davis refers letter from S. V. Yantis, Harper's Ferry, stating that parties are removing iron, &c., from the armory property at that place.

December 20, 1872. Received Ordnance Department.

[Second indorsement.]

ORDNANCE OFFICE, December 20, 1872.

Respectfully referred to Zadock Butt, ordnance agent, Harper's Ferry, W. Va., for immediate report. This paper to be reported to this Office.

By order of the Chief of Ordnance:

S. V. BENÉT,
Major of Ordnance.

[Third indorsement.]

ORDNANCE OFFICE, December 17, 1872.

Respectfully returned to the Secretary of War, and attention invited to the accompanying report of the agent of this Bureau at Harper's Ferry. Since the 15th July, 1872, when this Bureau requested suit to be instituted by the Department of Justice against the principal purchasers at Harper's Ferry, and their sureties, no instructions have been given the agent at that place regarding this property.

As it is not known what, if any, steps have been taken by the Department of Justice to guard the interests of the United States, it is respectfully recommended that the report of the ordnance agent be referred to that Bureau for its information.

By order of the Chief of Ordnance:

N. C. LYFORD,
Captain of Ordnance, Principal Assistant.

Ordnance officer's report. Received December 27, 1872.

WASHINGTON, D. C., December 5, 1872.

DEAR SIR: I am willing to approve any arrangement you might make with Mr. Lashorn.

GEORGE H. PLANT.

Mr. WILLIAM B. WEBB.

I am willing that Mr. Lashorn may sell the old material at the Ferry to pay moneys due him and such members of the company as have made advancements.

W. B. WEBB.

I certify that the above is a true copy of the authority given Mr. John A. Lashorn by George H. Plant, president, and W. B. Webb, a member of the Harper's Ferry Water-Power Company, to remove materials from the armory property at Harper's Ferry, W. Va.

ZADOCK BUTT,
Ordnance Agent.

DECEMBER 23, 1872.

HARPER'S FERRY, W. VA.,
December 23, 1872.

MAJOR: I have the honor to acknowledge the receipt of your communication of the 20th instant, requesting a report as to the facts contained in the communication of Mr. S. V. Yantis, of this place, to Hon. H. G. Davis, United States Senator, and by him referred to the Hon. Secretary of War. In conformity thereto I beg to submit the following: While the Government property at this place was under the charge and control of Capt. D. J. Tomy, ordnance store-keeper, he kept employed a night and day watchman to guard the property, but when the property was sold to the Harper's Ferry Water-Power Manufacturing Company, they discharged the night-watchman, and retained Mr. James H. Lashorn to look after the property during the day. More than a year ago the company began to fall off in paying Mr. Lashorn his monthly salary, and thus continued until the 1st of the present month, (December, 1872,) when he found the company to be in arrears to him to the amount of nearly \$400.

On the 2d instant Mr. Lashorn went to Washington to consult the members of the company with a view to a final settlement, and, finding it impossible to effect that, he proposed to them to permit him to sell the old material connected with the property to secure his salary as watchman, which authority they gave him in writing, a copy of which I obtained from Mr. Lashorn, and inclose for your inspection. You will observe from the verbiage of the order that it not only empowers him to sell materials for the purpose of securing his own money, but authorizes him to continue until he has sold sufficient to pay back moneys advanced by certain members of the company. Acting under that authority, Mr. Lashorn has removed and sold a portion of the cast-iron blast-pipe underlying the old blacksmith-shop at the musket-factory; also the iron window-frames of the same shop, most of which were either entirely broken or warped from the effects of the fire when the building was burned during the late war, together with a portion of a temporary plank roof covering the same, which was placed on the building by a United States quartermaster during the war; in all amounting to over \$300. These are the facts reported to me by Mr. Lashorn. At my suggestion, upon private advice given that gentleman, he has ceased to make any further removals, as I felt no authority to advise him officially in the matter. Mr. Lashorn informs me that he does not intend interfering in any manner with the property against the wishes of the Department, and is acting under orders from the company presumed to have authority in the matter.

I would call the attention of the Department to the fact that Mr. Lashorn's duties as watchman of the property has ceased, and the property lies there unprotected and at the mercy of intruders, who may enter thereon and commit depredations. It is well known that there is a great quantity of valuable materials connected with the pipes, wheels, and other fixtures in the armory yard, such as lead, block-tin, and brass, which can be easily removed, and from the effects of the flood in the Shenandoah River in October, 1870, almost the entire iron materials at the Hall Rifle Works are exposed, and will undoubtedly be broken up and sold if the property is left unguarded. Illustrative of the condition of the interests of the Government at this place, I beg to state the case of the Government stable, a large brick stable, sold at the sale in 1869 to a John Wilson for \$1,800, and when the flood came it washed down the stable, but left the bricks on the ground; and since that time more than one-half of them have been carried away, Mr. Wilson not having exercised any ownership over the property. I spoke to him about the matter, and he informed me he did not intend paying for the property, and I can assure you that his surety is questionable.

In conclusion, I would beg to suggest the immediate action of the Department in protecting this property, as, if it is permitted to remain unprotected, even for a short time, the consequences will be a very great loss to the Government.

Respectfully, I am, your obedient servant,

ZADOCK BUTT,
Ordnance Agent.

Maj. S. V. BENÉT,
Acting Chief of Ordnance, U. S. A., Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, January 10, 1873.

SIR: I have the honor to acknowledge the receipt of your letter of the 6th instant, referring for my consideration a communication from S. V. Yantes, reporting the removal of iron, &c., from the armory property of Harper's Ferry by certain persons; also a report from the ordnance agent in charge of the armory in relation thereto. You ask that such measures be instituted by the Department as may be necessary to protect this public property from further injury.

I am informed that this property has been sold by the Government, and purchased

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by private parties, who have given bond for the payment of the purchase-money. I do not see, therefore, how the Department can take any action in the matter, unless there are other facts with which it is not acquainted whereby the Government would have the right to interpose its authority.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. WILLIAM W. BELKNAP, *Secretary of War.*

UNITED STATES SENATE-CHAMBER,
Washington, January 16, 1873.

DEAR SIR: On 19th ultimo you wrote me that you had directed the district attorney (of this District) to report to you what progress in suit against Adams and others for payment of property at Harper's Ferry. I will thank you to give me his reply.

Yours, with great respect,

H. G. DAVIS.

Hon. G. H. WILLIAMS, *Attorney-General.*

OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,
Washington, D. C., January 14, 1873.

SIR: Referring to your letter of inquiry, and our conversation subsequently, concerning the claim of the United States against F. C. Adams and his sureties upon three bonds given by them, amounting in the aggregate to the sum of \$209,705, the purchase-money of certain lots and water-power at Harper's Ferry, I have the honor to state that I am preparing the declaration against Adams and his sureties, and will file them as soon as prepared, and endeavor to speed the cause as rapidly as possible. As, however, I said to you in our conversation, I am satisfied, after consulting with Mr. Phillips, the deputy marshal of this District, that the sureties have not enough property in this District or elsewhere, to my knowledge, to respond to more than one-fourth of the amount of said purchase-money; and I will repeat what I said to you, that it would be, as I think, better if the Government should take the necessary steps to take back the property and resell the same, holding the sureties for the difference between what it may bring at the second sale and that which Adams was to pay.

The sureties on the bond given for \$3,705 are Clinton Lloyd, the chief clerk of the Clerk of the House of Representatives; William B. Webb, a member of the bar of this District; and Francis A. McCartney, now deceased, formerly the disbursing clerk of the Post-Office Department. Some two years ago McCartney defaulted, became an inmate of the lunatic asylum, and died about eighteen months ago utterly insolvent. Webb has property in this District assessed at \$9,199, against which, I believe, there are no liens; and Lloyd has an assessment of \$10,244, subject to a lien for a large portion of that amount, say about one-half. The same parties and no others are sureties on the second bond, for \$30,000. Adams has no property in this District, so far as I can learn. The sureties on the third bond, for \$176,000, are the same, with the addition of Samuel P. Brown, J. W. Fitzhugh, Nathaniel Wilson, and George H. Plant. The latter gentleman has an assessment of some \$115,000, but it is so involved and encumbered that Mr. Phillips tells me that it is very difficult for him to make the money on executions already out against him. Wilson is assessed at \$14,577; Fitzhugh at \$1,000; and as to Brown, it is sufficient for me to say that the Government is already driven to withholding his salary as commissioner of the board of public works in order to make good his own default as navy-agent during the war. His deficit, as such, is over \$40,000. To recover one-third of the whole amount of these bonds here is, I think, impossible; so does Phillips; and it is for this reason that I advise some proceeding to recover the property sold to Mr. Adams, as well as to proceed here.

Yours, very respectfully,

GEO. P. FISHER,
United States Attorney, D. C.

Hon. GEORGE H. WILLIAMS,
Attorney-General, &c.

WAR DEPARTMENT,
Washington City, January 18, 1873.

SIR: I have the honor to submit herewith, for your consideration, and such action as you may deem it advisable to take, a request of the mayor of Harper's Ferry, W. Va.,

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that the vendor's lien against the water-privileges at that place be pressed in the United States district court of West Virginia, as rapidly as possible, in order that the sale of said water-privileges may be had at an early day, and further to invite your attention to the indorsement of the Chief of Ordnance thereon.

Very respectfully, your obedient servant,

WM. W. BELKNAP,
Secretary of War.

The Hon. ATTORNEY-GENERAL.

WASHINGTON, D. C., *January 13, 1873.*

SIR: As the only speedy and effectual mode of relief from the stagnation and ruin which has so long oppressed us, we do respectfully but earnestly pray you to order that the vendor's lien against the water-privileges at Harper's Ferry, W. Va., may be pressed in the second United States district court of West Virginia, as rapidly as possible, so that a resale of said water-privileges may be had at an early day.

In behalf of the corporate authorities and of the citizens of Harper's Ferry and vicinity,

I am, very respectfully,

DANIEL AMES, *Mayor.*

CHIEF OF ORDNANCE,
Washington, D. C.

[Indorsement.]

ORDNANCE OFFICE, *January 13, 1873.*

Respectfully submitted to the Secretary of War. Should this prove to be the most effectual and speedy mode of reaching a settlement of the case, it is desirable, in the interests of the United States and the people of Harper's Ferry, that it be followed.

It is respectfully recommended that this paper be referred to the Department of Justice for its consideration and action.

By order of the Chief of Ordnance:

S. V. BENET,
Major of Ordnance.

JUDICIARY COMMITTEE, HOUSE OF REPRESENTATIVES,
February 7, 1873.

I have the honor to inclose a bill referred to this committee, H. R. 3594, to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry, with request for such information as you may be pleased to communicate as to the merits of the bill, and the propriety of recommending its passage by the House.

Respectfully, your obedient servant,

JOHN A. BINGHAM,
Chairman.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

DEPARTMENT OF JUSTICE, *Washington, February 8, 1873.*

SIR: I have the honor to acknowledge the receipt of your letter of yesterday inclosing H. R. No. 3594, entitled "An act to authorize the Attorney-General to adjust the claim of the Government upon the purchasers of property at Harper's Ferry," and requesting me to communicate to you any information I might have as to the merits of the bill, and as to the propriety of recommending its passage to the House.

I understand that the property in question was sold, and that no conveyance was ever executed by the United States to the purchaser, and that he holds no other evidence of title than a certificate of purchase. He executed bonds to the United States for the purchase-money, with certain persons as securities, the bonds providing that the United States should retain a vendor's lien upon the property. The purchaser has failed to pay according to the stipulations of the bonds, and suit has been commenced upon them against him and his sureties. But I am advised that, if judgment is recovered, not more than \$30,000 or \$40,000 of the \$170,000 or \$180,000 for which the property was sold can be collected.

I had a conference with two of the sureties this morning, and I suggested as a possible way of reaching some result that the United States should file a bill in the United States district court for the western district of Virginia to enforce the vendor's lien upon the property, and that the purchaser should allow a decree to go in favor of the United States providing for the sale of the property to pay the purchase-money, and at the same time reserving to the United States all its rights to recover from the purchaser and his sureties all losses which have resulted or may result from his failure to pay the purchase-money according to contract. I do not know whether or not this arrangement can be effected. I presume, under the circumstances, that the property cannot be sold for the amount for which it formerly sold; that in any event the Government will lose in the transaction, unless the purchaser and his sureties can be made responsible for any difference between the amount for which the property may sell upon a decree to enforce the vendor's lien and the amount it was sold to the late purchaser.

I do not know that the bill, a copy of which you inclose, will be necessary, and I should prefer to have the matter adjusted through the proceedings in the court. I would suggest, however, that perhaps a bill could be passed authorizing the Secretary of War to resell the property, as the title remains in the United States, and providing also that the liability of the late purchaser and his sureties to pay for any losses resulting from the non-performance of their contract of purchase shall not be affected thereby.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. JOHN A. BINGHAM,
Chairman Judiciary Committee, House of Representatives.

UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,
Washington, D. C., March 7, 1873.

SIR: Referring to the conversation I had with yourself and Mr. Ames, the mayor of Harper's Ferry, on Monday, respecting the Government property there, I have to say that, since then, I have seen Nathaniel Wilson, esq., who informs me that Adams and his sureties intend writing you, requesting that you, in behalf of the Government, shall resell the property. Should they do so, I would respectfully suggest whether, if you should accede to their proposition, it would not be well to say to them that it shall be upon the express condition that, by doing so, none of the rights of the Government in respect to the suits now pending in this District against them shall be in any wise prejudiced by your acceptance and resale of the property, but that they shall be held liable therein to all intents and purposes as if no acceptance and resale had been had, so far as relates to the difference between the former and the future sale.

Yours, very respectfully,

GEO. P. FISHER,
United States Attorney, D. C.

Hon. GEO. H. WILLIAMS,
Attorney-General United States, Washington, D. C.

HARPER'S FERRY, W. VA., March 18, 1873.

SIR: I am in charge of the late armory property at this place. I was first employed as watchman of the property by Capt. D. J. Young, of the Ordnance Corps, United States Army, when he was stationed here. When the property was sold to the Harper's Ferry Water-Power Company, I was retained by that company on the same terms which I had served the Government under Captain Young. The company continued to pay me until the 1st of January, 1873, when I was notified by the company that they would exercise no further control of the property, in the following language: "The Government has sued us, and as we have never had any title to the property, I don't think we need trouble ourselves about it any further. From appearances I don't see how you are going to get any more pay unless the Government takes charge and pays you." When I received their letter I did not feel authorized to continue in charge of the property, not knowing where to look for my pay, relinquished my charge, and, no sooner had I done so, than some parties entered the armory yard, and commenced to commit depredations by breaking the iron water-piping, and taking the lead and brass from around the journals. They broke up a very valuable water-pipe about one hundred and fifty feet in length, and would have carried it away had I not stopped them.

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In consequence of these depredations I resumed charge of the property, and have continued protecting the same as before. Zadock Butt, esq., the ordnance agent at this place, can certify that my services have been valuable to the Government in protecting their interests. And knowing that the Government hold a vendor's lien on the property, I believed then, as I believe now, that the Government would reward my services.

In view of the facts stated I write you to know whether I may expect any reward from the Government for my services, and whether I am justifiable in continuing in charge of the property. If I abandon the property before thirty days, very material damage will be done the piping now lying exposed in the yard. The depredations are committed by boys, who break the piping for the purpose of securing the lead which is around the joints.

If you will indorse my services to the War Department, I will continue in charge; otherwise I will be compelled to look elsewhere for employment, as I have a family to support. As this matter is now before your Office, I will be obliged to you if you will inform me whether I must continue, and whether I can hope for the Government to pay me for my services.

Hoping to receive your views on the subject, I am your obedient servant.

JOHN A. LASHORN.

Hon. GEORGE H. WILLIAMS,
Attorney-General, Washington, D. C.

P. S.—I requested the company to inform me what disposition to make of the "keys" of the property, and they pay no attention to my requests, so I would like to know who I am to look to as controlling the property.

J. A. S.

DISTRICT OF WEST VIRGINIA,
UNITED STATES ATTORNEY'S OFFICE.
Clarksburgh, June 2, 1873.

SIR: Yours 29th ultimo, relative to institution of proceedings for the sale of the Harper's Ferry property for non-payment of purchase-money, to hand.

The proceedings to which you refer as having taken place between the Baltimore and Ohio Railroad Company and the purchasers were had in the circuit court of the county of Jefferson, West Virginia, and as soon as I can obtain a copy of the record of said proceedings (which I understand is quite voluminous) I will proceed to Washington to confer with you upon the subject as requested by you.

Most respectfully, your obedient servant,

N. GOFF, JR.,
United States Attorney.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, June 12, 1873.

SIR: I desire to obtain copies of all papers on file in your Department, duly certified for use in the courts, relative to the sale and the present condition of the Harper's Ferry property. Please give this matter early attention.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. WM. W. BELKNAP,
Secretary of War.

DEPARTMENT OF JUSTICE,
Washington, June 12, 1873.

SIR: I desire to obtain copies of the bonds and other papers on file in your Department, duly certified for use in the courts, relative to the sale of the Harper's Ferry property. Please give the matter early attention.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. WM. A. RICHARDSON,
Secretary of the Treasury.

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OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,
Washington, D. C., July 1, 1873.

SIR: After leaving your Office to-day, Mr. Goff and myself had an interview with Messrs. Webb and Wilson, two of the sureties of F. C. Adams, the purchaser of the Harper's Ferry property under the sale of December, 1869, and also with Mr. Oliver, the counsel of Mr. Adams. As we all supposed, they balked at that part of our bill asking a decree for the entire purchase-money; but said that if it could be understood that the Government would not proceed to a sale under the decree to enforce the vendor's lien, until after the determination of the claim of the Baltimore and Ohio Railroad Company, they would acknowledge service of the process as we desired, and thus expedite the resale. We told them that upon consultation with you this morning we had come to the conclusion to hurry forward the decree for the enforcement of the lien as fast as possible, and immediately upon obtaining it to institute proceedings to quiet our title to the premises against the Baltimore and Ohio Railroad Company, and not to make sale until after the decision of the issue between the Government and the railroad company, so that the best price might be had for the property. They then informed us that if such were your instructions to us they would do all in their power to hasten the case to a conclusion. Shall we assure them as from you that it is not the intention of the Government to sell under the vendor's lien, until we shall have tested the claim of the Baltimore and Ohio Railroad Company?

Please give me a reply to-morrow morning, as we are to have another conference in the afternoon.

Very respectfully,

GEO. P. FISHER,
United States Attorney, District of Columbia.

Hon. GEORGE H. WILLIAMS,
Attorney-General, &c.

UNITED STATES SENATE-CHAMBER,
Washington, January 7, 1874.

SIR: I desire to secure all the information in your possession relative to the sale of the Government property at Harper's Ferry, W. Va., and to the collection of the bonds given by the purchasers therefor. By giving this your early attention you will much oblige

Yours, respectfully,

H. G. DAVIS,
Of West Virginia, per M.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

UNITED STATES SENATE-CHAMBER,
Washington, January 13, 1874.

DEAR SIR: Some days since I addressed you a letter asking for a statement in detail of all the facts in your possession relative to the sale of the Government property at Harper's Ferry, W. Va.

Please indicate when I shall be likely to receive the information. If preferred by you I will have a resolution on the subject adopted by the Senate.

Respectfully,

H. G. DAVIS,
Per M.

Hon. G. H. WILLIAMS.

DEPARTMENT OF JUSTICE,
Washington, January 15, 1874

SIR: I have the honor to acknowledge the receipt of your letter of the 7th instant asking for all the information in the possession of this Department relative to the sale of Government property at Harper's Ferry, and to the collection of the bonds given by the purchasers thereof.

In reply I inclose herewith a copy of a letter addressed to this Department under date of the 13th instant by the United States attorney for this District, which contains the information you desire in relation to this matter.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. H. G. DAVIS,
United States Senate.

OFFICE UNITED STATES ATTORNEY, DISTRICT OF COLUMBIA,
Washington, D. C., January 13, 1874.

SIR: Your letter of the 8th instant, inclosing one received by you from Senator Davis, was received on Saturday morning.

In reply to the inquiries made by Senator Davis, I have the honor to state that, on the 3d of February, A. D. 1873, in obedience to your instructions, I instituted suits severally against Francis C. Adams, the original purchaser of the Harper's Ferry property, and his sureties on three several bonds, the real debt of which aggregates the sum of \$206,000.

The bonds upon which these suits were brought contained in their conditions, among other things, a provision for the enforcement of the vendor's lien. Upon consultation had between yourself, Mr. Goff, the United States attorney for West Virginia, and myself, it was agreed, you will remember, that bills in equity should be filed by the United States against Mr. Adams and his sureties in the district of West Virginia, for the purpose of enforcing the vendor's lien, which bills were filed some time in July or August last, and a decree obtained either in September or October for the sale of the property in such case. The sale to be made by Mr. Goff, as trustee, at a time to be fixed by a future order of the court.

When the suits were brought here to recover the purchase-money upon the bonds, there was a bill pending in Congress, which, I think, had passed one branch of it, authorizing a rescission of the sale and the release of Adams and his sureties from the payment of the sums stipulated in the bonds. In the mean time, or before any proceedings were instituted against Adams and his sureties, suit had been brought by the Baltimore and Ohio Railroad Company in the court of chancery of West Virginia, and a decree made in favor of said company, for quite a large portion of Adams's purchase, being that part of the said purchase lying on the Potomac River shore upon which said company had constructed their road some thirty-five years ago, as it was supposed, under and by virtue of an article of agreement made between Joel R. Poinsett, then Secretary of War, and Louis McLane, then president of said company.

If I have been rightly informed, the decree of the West Virginia court of chancery was grounded not only upon said article of agreement, but upon a deed in fee executed by one Byrnes to said company for that portion of the Adams purchase on which the road of said company is located, and that the evidence in the cause between said Baltimore and Ohio Railroad Company and said Adams and others showed that, some sixty or seventy years ago, the land in controversy lay below the ordinary flow of water in the Potomac River; that the State of Maryland was then entitled to exercise jurisdiction and proprietorship to said ordinary flow of water, and had granted by patent to said Byrnes some islands in the Potomac, as well as the land covered with water lying between said islands and the ordinary flow on the right bank of said river, and that that portion of the land in controversy was then covered with water and included in Byrnes's patent.

About the time of the filing of the bills in equity against Adams and his sureties, Mr. Goff and myself had conferences with you, and also with Adams and his sureties, the conclusion of which was that they should not controvert but expedite the proceedings about to be entered against them to enforce the vendor's lien, and that the sale to be made under the decree for the enforcement of said lien should not be made until all the outstanding claims against the property should be adjusted, and particularly not until it should have been judicially determined what, if any, right or claim the Baltimore and Ohio Railroad Company have to the property, or any part of it. With this understanding the decree for the enforcement of the lien was had in August or September last, a much earlier time than it could have been obtained had the proceedings been adversary.

After these decrees had been obtained, a bill in equity was proposed by Mr. Goff and myself at the suit of the United States and Adams and his sureties, complainants, against the Baltimore and Ohio Railroad Company, and filed in the district court for the district of West Virginia, for the purpose of quieting the title of the plaintiffs, and removing the cloud impending over it by reason of the claim of said company and its decree against Mr. Adams, the purchaser from the United States. To that bill I presume no answer has as yet been filed, or, if it has, I have had no notice thereof from Mr. Goff.

It is my duty, perhaps, to repeat to you in writing what I have heretofore said to you orally, that if judgments shall be obtained in this District in the suits brought upon the bonds given by Mr. Adams and his sureties, such judgments will be liens upon property scarcely equal in value to one-fourth of the purchase-money.

Having furnished you with this history of the matter, I have only to add that it will afford me great pleasure to meet Senator Davis either alone or with you, and furnish him or you with further and more detailed information.

Very respectfully, &c.,

GEO. P. FISHER,
United States Attorney, District of Columbia.

HON. GEORGE H. WILLIAMS,
Attorney-General United States.

UNITED STATES SENATE-CHAMBER,
Washington, January 29, 1874.

SIR: I inclose a copy of H. R. 3594, in reference to the Harper's Ferry property, introduced by Mr. McGrew in the House last session. The bill passed the House, but failed in the Senate for want of time. I desire to introduce the bill again this session, but before doing so would like to know if you have any suggestions or amendments to propose. An early attention to this matter will much oblige

Yours, respectfully,

H. G. DAVIS, *Per M.*

Hon. GEORGE H. WILLIAMS,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, February 3, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 29th ultimo, inclosing a copy of House bill 3594, in reference to the Harper's Ferry property. You state that you desire to introduce the bill again this session, but before doing so would like to know if I have any suggestions to make or amendments to propose.

In reply, I have to inform you that I have no suggestions or amendments to make in regard to the matter further than to say that I would prefer that the Secretary of War in place of the Attorney-General be authorized to adjust the claims of the Government upon this property, as it belonged to the military branch of the service.

Owing to my absence from the city, your letter has remained unanswered until today. The bill is herewith returned.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. H. G. DAVIS,
United States Senate.

UNITED STATES SENATE-CHAMBER,
Washington, April 22, 1874.

DEAR SIR: A bill is pending before the Judiciary Committee seeking a resale of the property belonging to the United States at Harper's Ferry. It appears that this property was publicly sold in 1868, and bonds taken from the purchasers. The committee desire to have copies of all these notes of the purchasers for the purchase-money, with surties, with date and amount. How many of these notes have been collected? What steps have been taken for the collection of said notes? Have said purchasers, or any of them, sought to avoid said purchases, and the evidence of the same.

Be kind enough to give reasons to the committee of what their action should be in the premises.

With great respect, I have the honor to be, your obedient servant,

J. W. STEVENSON.

Hon. GEORGE H. WILLIAMS,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, April 22, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, stating that there is a bill pending before the Judiciary Committee of the Senate seeking a resale of the property at Harper's Ferry, and you ask for information upon the subject.

In reply, I have to inform you that this matter was placed some time since in the hands of the United States attorneys for this District and the district of West Virginia, who have since had entire charge of it. I have this day addressed both these gentlemen, directing them to report to me at once what proceedings have been taken in the case. As soon as I shall have heard from them I will communicate further with you.

Very respectfully,

GEO. H. WILLIAMS,
Attorney-General.

Hon. J. W. STEVENSON,
United States Senate.

DEPARTMENT OF JUSTICE,
Washington, December 14, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 9th instant, referring to the sale of the Harper Ferry property, and asking what steps have been taken in regard to it, and how the matter stands at this time.

As this is a case of considerable importance, and has been pending in the Department for some time, I think it proper to review the action taken by the Department since it was first referred here by the Secretary of War.

On the 20th of July, 1872, that officer addressed a communication to this Department, inclosing the original notes and bonds executed by one F. C. Adams, to secure to the United States the sum of \$206,000 purchase-money for the water-power of the Shenandoah and Potomac Rivers, sold to him by the Government, in the year 1869, together with a copy of the notifications sent him and his sureties to pay the notes which became due in December, 1871. The Secretary of War stated that Mr. Adams had failed to complete his purchase; and he thought that the neglect of any smaller purchasers of public property at the same sale to fulfill their obligations, was due to his example, and requested that suit be immediately commenced on said notes and bonds.

In compliance with this request I transmitted the notes and bonds to the United States attorney for this District, with instructions to institute the necessary legal proceedings against said Adams and his sureties for the recovery of the amount due the Government for the purchase of this property.

In answer to an inquiry as to what steps had been taken in the matter, the United States attorney for this District, on the 14th of January, replied that he was then preparing the declarations against Adams and his sureties, and would file them as soon as possible, and endeavor to speed the causes with all practicable haste, although he was satisfied, upon inquiry, that neither Adams nor his sureties had property enough to respond to more than one-fourth of the amount of the purchase-money, and thought it advisable that the Government take the proper steps to recover the property back and resell the same, holding the sureties for the difference between what it might bring at the second sale and that which Adams was to have paid.

I subsequently wrote to the United States attorney for the district of West Virginia, requesting him to come to Washington to confer with me in regard to the resale of this property; who, when he came, had a conference with me and the United States attorney for this District, and afterward they consulted with the counsel of some of the sureties and with the counsel of Mr. Adams. These counsel objected to that portion of the bill asking a decree for the entire purchase-money; but agreed that if the Government would not proceed to a sale under the decree to enforce the vendor's lien until after the determination of a claim made by the Baltimore and Ohio Railroad Company, they would acknowledge service of the process, and thus expedite the sale. They were informed that the Government had decided to press for a decree for the enforcement of the lien, and, immediately after obtaining it, to institute proceedings to quiet the Government title to the premises against the Baltimore and Ohio Railroad Company, and not make sale until after the decision of the issue between the Government and the said railroad company, so that the best price could be had for the property. The counsel then agreed to do all in their power to hasten the case to a conclusion.

In reply to another request for information as to what had been done in the matter of these suits, the United States attorney replied on the 13th of January last, substantially as follows:

That, on the 3d of February, 1873, in obedience to my instructions, he instituted suits severally against Francis C. Adams, the original purchaser of the Harper's Ferry property, and his sureties on three several bonds, the real debt of which aggregates the sum of \$206,000.

The bonds upon which these suits were brought contained in their conditions, among other things, a provision for the enforcement of the vendor's lien. Upon consultation had between Mr. Goff, the United States attorney for West Virginia, and myself, it was agreed that bills in equity should be filed by the United States against Mr. Adams and his sureties in the district of West Virginia, for the purpose of enforcing the vendor's lien, which bills were filed some time in July or August, and a decree obtained either in September or October, 1873, for the sale of the property in each case, the sale to be made by Mr. Goff, as trustee, at a time to be fixed by a future order of the court.

When the suits were brought here, to recover the purchase-money upon the bonds, there was a bill pending in Congress, (which I think had passed one branch of it) authorizing a rescission of the sale, and the release of Adams and his sureties from the payment of the sums stipulated in the bonds; that in the mean time, or before any proceedings were instituted against Adams and his sureties, suit had been brought by the Baltimore and Ohio Railroad Company in the court of chancery of West Virginia, and a decree made in favor of said company for quite a large portion of Adams's purchase, being that part of the said purchase lying on the Potomac River shore, upon which said company had constructed their road some thirty-five years ago, as it was supposed under and

by virtue of an article of agreement made between Joel R. Poinsett, then Secretary of War, and Lewis McLean, then president of said company; and that, if he had been rightly informed, the decree of the West Virginia court of chancery was grounded not only upon said article of agreement; but upon a deed in fee executed by one Byrnes to said company for that portion of the Adams purchase on which the road of said company is located; and that the evidence in the cause between said Baltimore and Ohio Railroad Company and said Adams and others, showed that some sixty or seventy years ago the land in controversy lay below the ordinary flow of water in the Potomac River; that the State of Maryland was then entitled to exercise jurisdiction and proprietorship over said ordinary flow of water, and had granted by patent to said Byrnes some islands in the Potomac, as well as the land covered with water lying between said islands and the ordinary flow on the right bank of said river, and that that portion of the land in controversy was then covered with water, and included in Byrnes's patent.

About the time of the filing of the bills in equity against Adams and his sureties, Mr. Goff and Judge Fisher had conference with me, and also with Adams and his sureties, the conclusion of which was that they should not controvert, but expedite, the proceedings about to be entered against them to enforce the vendor's lien, and that the sale to be made under the decree for the enforcement of said lien should not be made until all the outstanding claims against the property should be adjusted, and particularly not until it should have been judicially determined what, if any, right or claim the Baltimore and Ohio Railroad Company had to the property, or any part of it. With this understanding, the decree for the enforcement of the lien was had in August or September last—a much earlier time than it could have been obtained had the proceedings been adversary.

After these decrees had been obtained, a bill in equity was prepared by Mr. Goff and Judge Fisher, at the suit of the United States and Adams and his sureties, complainants, against the Baltimore and Ohio Railroad Company, and filed in the district court for the district of West Virginia, for the purpose of quieting the title of the plaintiffs, and removing the cloud impending over it by reason of the claim of said company and its decree against Mr. Adams, the purchaser from the United States.

To that bill no answer had yet been filed.

I also applied to Mr. Goff, attorney for the district of West Virginia, for all the information he might have in reference to the matter; and, on the 10th of May following, he replied that in July, 1873, he instituted a suit in chancery in the district court at Wheeling to subject said property to resale for the purpose of satisfying to the United States the amount due from the purchaser of said property, as shown by his notes and bonds. The purchaser, Francis C. Adams, and all of his sureties, were made defendants. The cause came on to be heard at the September term of said district court at Wheeling, when a decree was passed in favor of the United States for the sum of \$193,013.33½ (the aggregate of principal and interest due the United States on said purchase) against said defendants. The decree recites that there is a lien on said property in favor of the United States for said sum, and directs that said Harper's Ferry armory property be sold at public sale, and the proceeds be applied to the payment of said lien.

A sale would have been made at once under said decree had it not been for a claim set up by the Baltimore and Ohio Railroad Company to a "right of way" over and through a portion of the lands of said armory property, which, it was claimed by said purchaser, Adams, and his sureties, tended to depreciate the value of said property.

The claim of the Baltimore and Ohio Railroad Company being a cloud upon the title to said property, and it not being deemed advisable to offer the land for sale with said cloud hanging over it, in January last, after consultation with the district attorney of the District of Columbia and myself as counsel for the United States, he instituted a suit in said district court against said Baltimore and Ohio Railroad Company for the purpose of removing said cloud. In this suit the United States, the purchaser, F. C. Adams, and his sureties were complainants, and the Baltimore and Ohio Railroad Company defendant; that it would come on to be heard in September next, when he would press for a hearing of said cause.

He stated that he thought it would be best for this suit to be disposed of before the property was offered for sale, but there was nothing to prevent a sale under the decree of September, 1873; that, should I deem it advisable under all the circumstances to proceed before the suit then pending was heard, he feared that the property, with the claim of the Baltimore and Ohio Railroad Company hanging over it undetermined, the rights of the parties thereto not being adjudicated, would not sell for sufficient to satisfy the claim of the United States.

I again, on the 6th of July last, addressed communications to the United States attorneys for this District and for the district of West Virginia, inquiring as to the condition of these proceedings; and was informed by the United States attorney for this District that no further action had been taken by him since the date of his last report, (January 13, 1874.)

50 SALE OF GOVERNMENT PROPERTY AT HARPER'S FERRY.

The attorney of the United States for West Virginia replied that, at the September term, 1874, of the United States district court at Wheeling, the defendant (the Baltimore and Ohio Railroad Company) appeared by counsel, and, by leave of court, filed a demurrer to the bill; and that this demurrer had not been disposed of, and would not be until the April term, 1875, of said court. With this exception nothing further has been done in said matter.

The substance of this letter has heretofore been communicated to the Senate in answer to resolutions adopted by that body; but, knowing the interest you take in the subject, I thought you would desire to be personally informed as to the proceedings had from the time the matter was placed in charge of this Department to the present time. From time to time as I may receive any further information, I will take pleasure in communicating it to you.

Very respectfully, your obedient servant,

GEO. H. WILLIAMS,
Attorney-General.

Hon. H. G. DAVIS,
United States Senate.



IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT :

[To accompany bill H. R. 3724.]

The Committee on Pensions, to whom was referred the petition of Michael Quarry, submit the following report :

Committee does not find from the evidence that Michael Quarry was and is so dependent as to justify a special interference in his behalf, and therefore recommend an indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill H. R. 3004.]

Bill for the relief of John C. Griffin, late second lieutenant Third East Tennessee Cavalry.

This is an act to provide payment of Lieutenant Griffin as second lieutenant Company E, Third Tennessee Cavalry, from February 23 to April 11, 1863, the difference of date of commission and muster, during which time he performed the duties of second lieutenant. The failure of muster was owing to non-receipt of commission, and, coming within the rule adopted in similar petitions for relief, the committee recommend passage of the act.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT:

[To accompany bill S. 765.]

The Committee on Military Affairs, to whom was referred the bill (S. 765) for the relief of Amos B. Ferguson, having had the same under consideration, submit the following report:

The record in this case shows that the petitioner was promoted from the rank of sergeant to second lieutenant Eightieth New York Infantry, to date from April 20, 1864, and served as such officer, with all the duties and responsibilities thereof, from said date. Owing to some negligence on the part of the officers of the State government of New York, his commission was not received until September 26, 1864, at City Point, Va., and this bill provides for his payment as such second lieutenant, less any amount paid him as sergeant, from April 20 to September 26, 1864.

As this officer was not supernumerary, and the fault of non-muster as second lieutenant was not attributable to him, together with the fact that he performed duty as such second lieutenant, the committee recommend passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1875.—Ordered to be printed.

Mr. LOGAN submitted the following

REPORT:

[To accompany bill H. R. 2724.]

The Committee on Military Affairs, to whom various bills have been referred for the relief of certain States on account of ordnance and ordnance-stores issued to said States during the war of the rebellion, having had the same under consideration, report as follows :

The records of the Ordnance Department show that ordnance and ordnance-stores, valued as follows, were issued to the following States and Territories between January 1, 1861, and April 9, 1865, viz :

California	\$245,693 10
Connecticut	3,438 00
Delaware	20,431 00
Illinois	163,674 40
Indiana	16,910 13
Iowa	933 00
Kansas	85,349 00
Kentucky	1,139 00
Maine	6,219 25
Maryland	1,188 00
Massachusetts	25,210 00
Michigan	7,294 00
Minnesota	7,595 00
Missouri	745,910 06
Nebraska	8,487 00
New Hampshire	154,696 00
New York	107,244 00
North Carolina	5,896 00
Ohio	381,870 00
Oregon	14,416 57
Pennsylvania	1,327 00
Rhode Island	74,598 76
Tennessee	8,803 00
Vermont	642,608 37
Wisconsin	10,586 73
Arizona Territory	1,982 50
Dakota Territory	10,022 34
New Mexico Territory	45,251 00
District of Columbia	1,979 00

It is further shown, from the annual report of the Chief of Ordnance for the year 1871, that these issues, which were made during the war, were made for the maintenance of the Government and the preservation of the Union, and should have been charged, as arms and other stores issued to volunteers, to the United States, and not to the States.

Your committee are of the opinion that the relief asked for should be granted, and therefore report back the accompanying bill, and recommend that the same do pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1875.—Ordered to be printed.

Mr. WASHBURN submitted the following

REPORT :

[To accompany bill S. 821.]

The Committee on Claims, to whom was referred the bill (S. 821) for the relief of Peasley & McClary, having considered the same, submit the following report :

It appears from the evidence submitted in this case that, in 1867, the mail-route from Worcester, Mass., to Nashua, N. H., was extended to Wilton, N. H. This required the transfer of the route-agent and the mails from the Worcester and Nashua Railroad depot to the Wilton Railroad depot, a distance of about half a mile across the city of Nashua, and at the request of Mr. Burt, postmaster at Boston, who made provision for said extension, Peasley & McClary performed this service. The connection between the trains was close, and it required them to be promptly on hand to insure the transfer. They performed this service from December 2, 1867, to January 18, 1869, supposing the postmaster at Boston had authority to pay them.

Before the presentation of their claim to the Post-Office Department, more than two years had elapsed, and the unexpended balances had been covered into the Treasury, under the act of July 12, 1870, leaving no fund from which they could be paid.

There seems to be no question that the service was faithfully performed, and that claimants have not been paid. They transferred the route-agent and his mails for one year one month and sixteen days, and they offered to settle with Mr. Burt at one hundred dollars per annum.

We report a bill to pay them one hundred and twenty-five dollars, as a substitute for the bill S. 821 referred to us, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT:

The Committee on Post-Offices and Post-Roads, to whom was referred the petition of Elijah J. Woolum, beg leave to submit the following report:

The petitioner states that, "under a contract, and by order of the military authorities under command of Bvt. Maj. Gen. M. H. Chrysler," he carried the United States mails from Rome, Ga., to Blue Mountain, Ala., from June 1, 1865, to November 1, 1865, for which service he claims the sum of \$5,000.

General Chrysler, in an affidavit dated February 12, 1872, testifies: "That the above-named Elijah J. Woolum was employed to perform the service of carrying the United States mail as above stated, and for the time charged for, and that he did perform the service of carrying the military and civil mail between Rome, Ga., and Blue Mountain, Ala., under direction and by order of Major-General Thomas, as I understood at the time I assumed command of the district of Alabama. And when I so assumed the command of such district, with headquarters at Talladega, Ala., I found Elijah J. Woolum at that time carrying the United States and civil mail from Rome, Ga., to Blue Mountain, Ala., up to the point of railroad communication with Talladega, Ala., and under orders, as I understood, from General Thomas, and I ordered him to continue the service as set forth in the above and foregoing account, which said service he performed as above stated. I can further state that, in the then unsettled condition of that portion of Alabama at that time, said service was both difficult and dangerous, and was the only means by which mails could be transported for the United States forces in that section."

That the service was performed, as claimed, is corroborated by the sworn testimony of seven persons; and it further appears by the affidavit of petitioner that he has never received any remuneration for said service.

The amount claimed is much in excess of what has been charged for the same service before and since, as shown by the following extract from a letter of the Postmaster-General, dated March 7, 1872:

On the whole subject of this claim the records and files of this Department shed no light, as no trace of the alleged service can be found, except that a telegraphic dispatch is on file, of which the following is a copy:

"KINGSTON, GA., September 7, 1865.

"Postmaster-General:

"We are now running four-horse coaches from Rome, Ga., to Blue mountain, Ala. Will carry the mail for \$1,250 to the 31st December, 1865. Our bid will be in Washington in a few days.

"SARGENT, WOOLUM & CO.

It is uncertain whether this sum, \$1,250, was intended for so much per annum or for the period, (September 7 to December 31, four months.) If the latter, it was equal to a compensation of \$3,750 per annum, or \$325 per month. There is also on file a proposal, in regular form, dated Rome, Ga., November 2, 1865, signed by Joseph Sargent and E. J. Woolum, with two guarantors, offering "to convey the mails of the United States from such time as the Postmaster-General may designate to June 30, 1866, between Rome and Blue Mountain, Ala., sixty-two miles, daily service each way, for the sum of 1 cent." As will be presently seen, the service was, at the date of these papers, under contract to another person, and therefore no action was taken on them by the Department.

Other facts pertinent to the question are as follows:

Prior to and at the opening of the rebellion in 1861 the mail was carried on the Rome and Blue Mountain route only to Centre, thirty-eight miles, and but once a week. On the return of peace and the re-opening of mail facilities in the South, six trips of the mail per week between Rome and Blue Mountain were demanded by the citizens, and were granted by the Postmaster's acceptance, August 30, 1865, of the offer of F. C. Taylor for that amount of service, which he began October 24, 1865, and continued to June 30, 1866, at the rate of \$1,700 a year, \$142 per month. This engagement was promptly and satisfactorily carried out, and, considered as a continuation of the same service which Woolum claims to have performed, indicates the value of the labor in the estimation of other parties.

It further appears from an additional extract from the same letter, hereto attached, that the petitioner stands charged on the books of the Post Office Department for the sum of \$5,592.15, for failure to enter into contract with the Department in accordance with his proposals and the award of the Department to carry the mail from Rome, Ga., to Blue Mountain, Ala.

September 30, 1865, this route was advertised, with all other routes in Alabama and Georgia, as No. 6657, Rome, Ga., to Jacksonville, Ala., fifty-one and a half miles, three times a week, with an invitation for bids six times a week; service from July 1, 1866, to June 30, 1867, one year.

The bids received were as follows:

Francis C. Taylor, \$3,000; three times a week.

Francis C. Taylor, \$6,000; six times a week.

Samuel Strayhorn, \$490; to Jacksonville.

Samuel Strayhorn, \$560; to extend to Blue Mountain.

Samuel Strayhorn, \$1,100; six times a week to Blue Mountain.

Joseph Sargent and E. J. Woolum, 25 cents; daily each way; extend to Blue Mountain.

The bid of Sargent and Woolum, at 25 cents per annum, was accepted by the Postmaster-General, and the usual notice given, but they refused to execute contracts or perform service, and now stand on the books as failing bidders, and were reported to Congress as such, as required by law. The service six times a week was then offered to F. Strayhorn, the next lowest bidder, at \$1,100. He declined, and the next lowest, Taylor, at \$6,000, was taken, and he began July 26, 1866, and continued to June 30, 1867, the difference between his pay and the bid of Sargent and Woolum, at 25 cents for nearly eleven months, being charged to them and their guarantors, amounting to \$5,592.15, and it so remains.

In view of the facts set forth, your committee deem the petitioner not entitled to additional compensation, and therefore ask to be discharged from the further consideration of said petition and accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of William A. Wise, submit the following report:

His complaint is that his pension (\$8 per month) did not commence until ten years after his discharge, and only from the time of the completion of his proof. He says he failed to apply for one until his stock of means was mostly exhausted. For himself and others similarly situated, he prays an amendment of the law to the effect that their pensions shall date back to the period of the discharge of the invalid soldier.

The law he complains of is right. It was his own fault that he did not make his application within five years. Had he done so, the pension would have related back to the disability or discharge.

The committee ask to be discharged from the further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill S. 1175.]

The Committee on Pensions, to whom was referred the bill (S. 1175) extending the provisions of the act approved June 4, 1872, entitled "An act granting a pension to A. Schuyler Sutton," submit the following report :

Congress, by act approved June 4, 1872, directed the name of Sutton to be placed on the pension-roll at the rate of \$30 per month, from the passage of the act, in lieu of the pension he was then drawing under the general law. The object of this bill is to give him arrears reaching back to the time from which his original pension began. It seems he was acting lieutenant-colonel at the time he received his injury, but not mustered as such.

Congress has once considered and decided his case. He is drawing the highest pension given by the law, except in extreme cases where the disability is so great as to require the regular constant attendance of another. When the law passed, doubtless the case of Colonel Sutton was fully considered, and he was denied arrears, as has been the case with other applicants for the last six years. There may have been now and then an exception standing upon peculiar grounds, but the general rule has been as stated, to deny arrears.

We follow that rule, and recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. SARGENT, from the Committee on Naval Affairs, submitted the following

REPORT:

The Committee on Naval Affairs, who were instructed to inquire into the expediency of reducing the number of navy-yards and of naval hospitals, and authorized to visit the different navy-yards and naval hospitals on the Atlantic coast for the purpose of such inquiry, make the following report:

The navy-yards on the Atlantic coast are at Washington, Norfolk, League Island, Philadelphia, Brooklyn, New London, Charlestown, and Kittery. Besides these there are navy-yards at Pensacola and Mare Island. The committee believe that three of these yards on the Atlantic coast may be dispensed with without injury to the service, and greatly in the interest of economy, viz, the navy-yards at Washington, Philadelphia, and New London. The reasons for this opinion will be given as we remark upon the separate yards.

For several years past Congress has hesitated to make appropriations for improvements at the navy-yards from a feeling of uncertainty as to the desirableness of retaining so many yards and a doubt as to which could be dispensed with. Consequently, but comparatively small amounts have been appropriated, either for preservation or repair, or for important works of improvement; and these works have been suspended in many instances, and have sustained the usual injury and remained incomplete. It would be most desirable to change this feeling of uncertainty, and for Congress to determine upon a plan of action by which useless yards or those improperly located could be abolished, and those actually necessary for the public service, and best suited by location and other natural advantages, could be put in a high state of efficiency.

A few navy-yards well located, ample in area, and supplied with the best facilities for executing work rapidly and well, would be much more useful to the country in case of war than many yards scattered along the coast, difficult of defense, poorly improved and provided, as they are apt to be where so numerous. In time of peace it is of obvious economic advantage to lessen the number of civil organizations paid from the Treasury. Each navy-yard must have a staff of officers, clerks, watchmen, &c., to superintend and direct its work, keep its accounts, and guard its property. The staff necessary for a small navy-yard can manage a large one; and, by concentrating the work, by building up a few large yards and dispensing with the others, the wants of the Government can be better served, and hosts of such employes can be dispensed with, and the money expended for them remain in the

Treasury, or go farther toward accomplishing the purpose of navy-yards, the creation and maintenance of an adequate navy.

The recommendations of the committee are not designed to cripple the Navy, but to make it efficient. It is because more, better, and cheaper work can be done at a few large, well-provided establishments, than at the many comparatively poor ones the country now has, and the moneys appropriated by Congress produce more beneficial results to the Navy, that we recommend a change. Every sound consideration of public policy requires fostering care for the Navy and adequate preparations at our dock-yards to utilize, in case of emergency, the skill and strength of the country. We must depend on naval resources to prevent the blockade of our sea-board cities, and intrust the defense of these cities as much to floating as to fixed defenses. The Navy is necessarily the chief protection of the coasts and commerce of the country. A few navy-yards of high efficiency, within reach of and supplemented by the commercial and mechanical resources of our great cities, will combine the force and skill of the nation to make that defense cheap and effective.

NEW YORK NAVY-YARD.

The site of the navy-yard at Brooklyn, N. Y., is excellently adapted to the wants of the Navy. It has an ample area, but not too large, there being room for timber-docks, basins, and buildings adequate to the wants of a first-class yard. The improvements at the yard are generally of a permanent and judicious character, and the yard is capable of indefinite development at moderate cost. There have been some speculative projects of individuals for the breaking up of this yard, but it would be seriously detrimental to the interests of the Government to accede to them. This yard is wholly within the defenses of the great city—defenses which must be kept up for the protection of the immense interests centered in the commercial metropolis, and which, at the same time, protect the property of the Government at the yard, and give a security which could not be had for the yard alone, except at immense and unnecessary cost. As it is, the defenses of the city protect the navy-yard. Away from the defenses of a great city, and anywhere within available distance of the sea, the cost of protecting the yard would be equal to the cost of a first-class yard. This is a consideration of high importance; but there is another of equal value. This navy-yard is surrounded by private dry-docks, ship-yards, and machine-shops, with their great numbers of skilled artisans and vast stores of material which the nation needs in case of war. These all become auxiliary to the navy-yard in time of war, as available as if a part of it, and are directed by its skilled naval constructors, ordnance officers, and equipment officers, aided by trained foremen and mechanics. The Government has the immediate use of all the resources created by a great commerce, which find private employment and cost it nothing in their creation or use in time of peace, but which lose commercial employment at the commencement of hostilities, and become at once subsidiary and invaluable to the central navy-yard, to which they are contiguous, and which directs, instructs, and oversees their vast capacities for usefulness. All these advantages are lost by the removal of this navy-yard to a point remote from New York, even if within what are called its waters. Absolute contiguity to the city is necessary to retain them. The committee believe the Government has a right to consult its own interests

and the public welfare and defense in deciding upon the propriety of retaining and improving its own property, even if some private or speculative advantages may be subserved by its yielding up its possessions. Besides considerations of the greater efficiency of the navy-yard as at present located, adding to its capacities the whole constructive ability of its surroundings, by which three-fourths of our fleet would be equipped for hostile operations, it is estimated that \$25,000,000 would not replace it on another site, where this added efficiency would not exist. The committee do not believe it well to embark on such expenditures or to forego the advantages of the present site.

Our observations at the Brooklyn yard led us to conclude that the appropriation most urgently demanded there is for the preservation and repair of the valuable cob-dock, now in extremely bad order, but which can be made a secure and capacious basin at moderate cost. An annual expenditure of \$30,000 per year for this purpose for a few years would be very judicious.

The buildings on the yard are numerous and generally suitable for their purpose. Needed repairs on them are estimated to cost about \$95,000. The yard is well supplied with large tools and excellent machinery, and is in many respects in an excellent state of efficiency. The money expended on it should be for permanent and systematic improvements to develop its capacities and make it a first-class yard in every respect. Money so expended will be well invested, and bring good interest in national safety and honor.

LEAGUE ISLAND, PHILADELPHIA, AND WASHINGTON NAVY-YARDS.

These navy-yards should be concentrated at League Island. Congress provided by act of February 18, 1867, "that if League Island be selected, the navy-yard at Philadelphia shall be dispensed with and disposed of by the United States as soon as the public convenience will admit." Subsequent legislation has provided for the partial removal of articles from the Philadelphia yard. The sooner the whole transfer is completed and that yard closed up the better. The navy-yard at Philadelphia has less area than any other, less than twenty-two acres, entirely too small for the purposes of the Government, is much exposed to fire, and its site would sell for several millions of money. The location of the yard has retarded the growth of the city in that direction, the undeveloped water-front below having long been needed for commercial purposes, as well as the site of the yard itself, which now operates as an effectual barrier to the necessary communication with the wharves below. These considerations would not be conclusive if the interests of the Government absolutely required the place for a navy-yard, for local must give way to general good. But League Island is a better place for a navy-yard, and is now partially improved as such, as we shall show. But these facts account for the great rise in value of the old site commercially, and guarantee that it will sell for a sum that will duplicate all its facilities at League Island in a permanent and substantial manner, even at a forced sale. It is an absurdity to prolong a state of things by which two navy-yards are maintained within three miles of each other; and the Government should hasten the work at League Island, so as to abolish the Philadelphia yard, stop expense of repairs at the latter point, and realize for the Treasury the proceeds from the sale of its valuable site. The buildings at the Philadelphia yard are forty-two in number, of which twenty-two are wood, and the repairs are estimated at \$70,000. Its streets are narrow and tortuous, and the trans-

portation of timber and heavy articles through them is extremely difficult. It has but 820 feet water front measured on the port-warden's line, and of this front more than one-half (440 feet) is taken up with the floating sectional dry-dock, its deep berth and shallow basin, and the openings for the launching-ways of the ship-houses. There is but one pier. The buildings are crowded in together, with little regard to plan, and the work at the yard is hindered and made expensive by confusion resulting from confined space and other inconveniences. To put the dry-dock in order will cost \$119,000. The tools and machinery are valuable, and will be available for the plant of the League Island yard.

The Washington navy-yard has too small an area for an extensive establishment, and has of late years been used rather for a repairing and manufacturing yard than for building. The approach to it is by a crooked and difficult channel; it is far from the sea; is remote from supplies of timber, iron, and coal; the number of skilled artisans is limited; and there is no work done at it that cannot be more cheaply done and the materials more cheaply obtained at League Island, when that yard is put in proper condition to do it. The Washington navy-yard is well supplied with good buildings, tools, and machinery, and in a better locality for its purposes would be of great value. The estimate for repairs of buildings is about \$19,000.

League Island has many striking advantages as a site for a navy-yard. It is inaccessible to a hostile fleet from the sea, being within the defenses of a great city; a great manufacturing population surrounds it—skillful wood and iron workers, busy in time of peace in the creation and repair of the commercial marine, and furnishing and inexhaustible supply of skilled labor; it is in the midst of a great coal and iron region; it is ample in its area, and has a water-front of great extent and value; and its fresh water is needed to preserve our iron vessels.

League Island is situated in the Delaware River, below the Horse-Shoe Shoals, and immediately above the confluence of the Schuylkill, and distant about four miles south from Market street, the principal east-and-west street of Philadelphia. The present area of the island proper is 410 acres; between the banks of the back channel, 305.5 acres; between back channel and Government avenue, 37.25 acres; and outside of banks to the port warden's-line, 170.25 acres; making a total area of Government property of 923 acres. The back channel is in possession of the Government, and entirely under its control. The arrangement of the warden's line gives a water-frontage on the Delaware and Schuylkill of nearly three miles, besides the frontage on the back channel. About a mile, along the Delaware front, will have a depth of 25 feet at low water. By a series of borings on the island, extending entirely across it and laterally, it has been found that a stratum of coarse sand, compact gravel, and bowlders exists at a much less depth than was before supposed, viz, a minimum depth of 11.7 feet, and a maximum of 22 feet. The engineers of the Government find this favorable for economical and substantial foundations for extensive public works. A comprehensive plan for the development and permanent improvement of this station has been prepared for the Bureau of Yards and Docks by a board of engineers appointed for the purpose.

A reference to the features of this matured general plan will show the capacity for development of this site. It is proposed to enlarge the island proper to an area of about 624 acres, and at the same time deepen the back channel into a capacious storage-basin—about 240 acres capacity—leaving 60 acres of firm land on the north, between it and Govern-

ment avenue, on the side toward Philadelphia. The material excavated from this basin is excellent for filling in, and the surface of the island furnishes a ready and very accessible place of deposit for the matter taken from the basin. It is proposed that the grade of the island shall be raised in the center to 2 feet 5 inches above the coping of the quay-wall, and the coping of the quay-wall 10 feet 5 inches above mean low water, or 1 foot 6 inches above the highest freshet level. Broad street is continued across the island as the principal avenue, laid out 125 feet wide, and on this street will be located the principal buildings. It is slightly deflected toward the east, so as to run parallel with the Delaware River front. Other streets of less width are laid out, parallel with Broad street, as also intersecting streets, making the blocks or squares 400 feet north and south, by 230 feet east and west. The principal workshops and store-houses are each to occupy one of these blocks, with a quadrangular building of the same exterior dimensions, but having an interior court-yard 100 by 270 feet, in which to locate the motive-power, receive and deliver stores, &c.

There are by the plan ample arrangements for the construction and repair of vessels. A system of rail-tracks is to be operated in conjunction with a shallow basin and a floating-dock, by which twenty vessels can be in course of construction or extensive repair at the same time, and one dock serve for all. The method is simple and practical, and far less expensive than stone docks, while it affords the greatest facilities, and is the best method by which a large number of ships can be provided for at the same time. One or more of these railways can be constructed at first, and the system enlarged at pleasure, without increasing the relative cost or disturbing those already built and in use.

The mold-lofts and shops for iron ship-building are to be located immediately in the rear of these railways. A deep repairing-basin, or about 39 acres, with four stone docks, is projected. On one side of this basin are to be erected the machinery-establishment, foundry, forging, boiler, and machine shops. Around the sides of another deep basin of 40 acres, connecting with the river, are to be the mast, spar, and boat shops and the coaling-stations. A deep canal connects the deep basins with the back channel. The ordnance foundries, shops, and stores, with the gun, shot, and anchor parks, are located on the back-channel front of the island, where ample space and wharf facilities are devoted to this department. The entire work of constructing, launching, docking, repairing, masting, arming, provisioning, coaling, and fitting out vessels can, by this plan, be carried on without exposure to running ice or the river or tidal currents.

A great element of cost in extensive public works of this character is in the excavation and removal of earth and rock. At League Island the conditions are extremely favorable for the cheap execution of this work. Extensive deep and shallow basins are indispensable to a great modern dock-yard, and may here be dredged out with facility to any required extent, and by the cheapest possible process. The grading of the island is accomplished by merely depositing on it the soil thus obtained. The cost of piling for foundations, especially where the hard substratum is so near the surface as at League Island, is much less than the cost of excavations where the bed-rock is near the surface. In the latter case extensive basins are so costly as to be a practical impossibility; and a site so encumbered is unfit for a dock-yard. Pile foundations are used for heavy structures at all the navy-yards, except Kittery, and along the water-front of our principal cities.

At the time of the visit of the committee to League Island, an area as

large as the whole extent of the Philadelphia navy-yard had been brought to the grade fixed by the engineers by depositing the stiff mud or clay, making a good soil, dredged from the back channel, where a deep basin of some 18 acres had been thus formed. A portion of the area filled to grade has been fitted for ordnance and shot parks and anchor and chain-cable storage, and is occupied with this description of naval material removed from the Philadelphia yard. A fine brick workshop for the Bureau of Yards and Docks, two stories high, has been finished. The iron-working establishment for the Bureau of Construction, built of brick and fire-proof, was well advanced, and the foundation was being completed for a large building for the Bureau of Steam-Engineering. A gate-house has been erected at the Broad street entrance, a landing-wharf at the foot of Broad street, a tram-way across the island for transporting materials and filling-in purposes, and some temporary buildings.

A letter of Civil Engineer Prindle, United States Navy, in charge of the work at the island, to Hon. Eugene Hale, of the House of Representatives, a copy of which has been furnished to the committee, thus refers to the facilities for constructing the quay-wall at League Island :

For quay-walls in salt water the foundation-piles are cut off and masonry commenced beneath the surface of the mud, in order to escape the destructive effects of the teredo. Here in fresh water, where the teredo does not exist, quay-walls can be far more cheaply and rapidly constructed of crib-work, which can be carried up to low-water or even half-tide level, before any masonry becomes necessary, and thus effect an immense saving both in cost and time of such construction.

The same engineer thus discusses the question of excavation and filling at the island :

The fact of the depression of the surface of the island below high-water mark, the necessity of dikes to prevent its overflow at every high tide, and the great expense necessary to reclaim and prepare it for permanent occupancy, by grading and filling, has been the occasion of much unfriendly criticism, and a frequent argument against the adoption of this site for dock-yard purposes, while at the same time the pressing necessity for a fresh-water basin of large capacity for the storage and preservation of our iron-clad fleet is fully admitted, and regarded as of the first importance.

Natural basins suitable for these purposes and well located are very rare, and even those the best and most advantageously located require extensive improvements to make them available. The great superiority in every respect of the boat-channel for such purposes cannot be denied, and I believe is universally admitted. The work of deepening and enlarging this channel for such an iron-clad storage-basin would be very costly, if there were no place immediately at hand for depositing the spoil, and long tows to distant dumping-grounds made necessary, as would inevitably be the case if the natural surface of the island was at the proper grade and no room to be had there for the deposit of material dredged from the basin. The question of disposition of the spoil, which is the great difficulty everywhere, is here readily met in the opportunity for deposit on the island, where it is needed, and at a minimum cost. One-half at least, if not the whole, of the cost of filling in the island to grade should therefore be charged to the storage-basin improvement, instead of grading and filling.

His observations upon the effect on the healthfulness of the island by the dredging and depositing on it such large masses of material are interesting :

The operation of dredging and depositing such large quantities of material from the back channel upon the island, contrary to all expectation, has not proved at all prejudicial to health. This filling, consisting as it does of fine sand, gravel, and clayey material to so great an extent, and without any perceptible forms of animal or vegetable matter, soon becomes dry and wholesome earth, and every acre of it added to the island must necessarily, in my opinion, increase its salubrity rather than otherwise.

The work most necessary to be prosecuted at present is the commencement of the quay-wall and inclosure for the basin. The erection of the necessary buildings and the transfer of the material from the Philadelphia yard to League Island should be diligently prosecuted.

Congress should cause the old yard to be carefully valued, and appropriate a sum equal to this value to be expended in renewing on League Island the present establishment at Philadelphia. By this means the old yard could soon be turned over to its purchasers and the Treasury be re-imbursed for the money expended. This could be done by commissioners appointed for the purpose, who might be authorized to receive bids subject to the approval of the Executive or of Congress. The proceeds of the site and buildings at Philadelphia would create a far better yard at League Island, and there would be a relief from the present anomalous condition of affairs by which two establishments are maintained so near to each other.

To show the nature of the improvements immediately in the vicinity of League Island, the value of the site, and the use that a great steamship company is making of premises of the same or less favorable character, we give the following article from a Philadelphia newspaper, detailing the improvements at the mouth of the Schuylkill River by the Red Star Steamship Line, which were in progress at the time the committee visited the station :

At the present time over \$600,000 is being expended in improving the mouth of the Schuylkill River for marine purposes, and the work, when completed, will prove of great value to the commercial interests of Philadelphia. Works of the most complete and elaborate character are being constructed, in order to provide a first-class depot for freight and passenger traffic between this country and Europe, and to furnish means for loading and dispatching economically the large fleet of sailing-vessels which are being continually kept afloat by Messrs. Peter Wright & Sons, agents of the International Steamship Company, (Red Star Line, plying between Philadelphia, Antwerp, and Liverpool,) which line is making these extensive improvements.

A large plot of ground has been purchased by the company at the mouth of the Schuylkill River, at Girard Point, directly west of the League Island navy-yard, and fronting immediately on the Delaware, below the Horseshoe, thus avoiding the difficulties to be encountered during the winter from the ice, which forms such a formidable obstacle to navigation at that point. They have built a railroad, about two miles long, to connect at Point Breeze with the Delaware extension of the Pennsylvania Railroad, thus giving direct and rapid communication with the business centers of the city. The improvements are at what is known as Girard Point. When Twenty-seventh street is opened its entire length, it will make a drive directly to the spot. Here the company have built a large wharf, 250 feet wide and 500 feet long, with docks on either side, each 200 feet wide and 500 feet long, with 25 feet of water at low tide. These docks are large enough to berth four first-class ocean steamships, or twelve of the ordinary grain-carrying vessels, at one time, and four of them can be loaded at one time. On the center of the wharf has been erected an immense grain-elevator, 100 feet front on the river by 200 feet deep, and 124 feet high to the peak of the roof. In order to secure a proper foundation for this immense structure, there were 3,728 piles driven to a depth of from 40 to 60 feet. These piles are of Carolina yellow-pine logs, driven in a close row 5 feet deep around the foundations of the walls, and in groups of sixteen under each of the piers which support the floors and bins; upon these piles are laid stone foundations, composed of "dimension stones," weighing from one to ten tons each. The building is of brick as high as the "bin-floor," above which it is built entirely of wrought iron, both sides and roof. There were over 1,000,000 bricks, 10,000 tons of iron, and over 500,000 feet of lumber, most of it white oak, used in the construction. The capacity of the elevator can be better explained by stating that it is half as large again as the great building at Washington avenue wharf, where the American and Red Star steamships are now loaded.

The building will contain twelve elevating-machines, each with a capacity of unloading 4,500 bushels per hour, and delivering the same quantity into the holds of the vessels in the docks. This would make the entire working capacity of the machinery 54,000 bushels per hour. The grain will be unloaded in thirty-six bins of boiler-iron, circular in form, 22 feet in diameter and 50 feet deep, having a capacity of over 15,000 bushels each. The spaces between these bins will also be utilized, and will each hold about 5,000 bushels. Two cast-iron spiral stairways reach to the tops of the bins. Four railroad-tracks run into the building, and there will be room to unload twenty-four cars at one time, and, by use of steam-shovels, a car containing 400 bushels of bulk-grain can be unloaded by two men in five minutes. On each side of the elevator are large warehouses, 200 feet long by 74 feet wide, for general freight and emigrant busi-

ness, and in the east warehouse are the two large boilers which are to supply steam for a double engine of 130 horse-power, situated in the top of the elevator, and which will run all the machinery. There is also a large sail-loft, for repairing the canvas of the vessels. A railroad-track runs through each of these warehouses to the end of the wharf. In constructing the wharf there were 2,300 piles driven in addition to those under the foundations of the buildings, making over 6,000 piles in all, driven to an average depth of 49 feet. The work on these improvements was commenced in April, 1873, and will be completed about the middle of October of this year, when the new facilities will be at once put to service in loading the grain of the new crop, which is now coming forward.

The International Steamship Company own sufficient land to build another wharf and two more docks the size of the present ones, whenever their business shall require it. It is also the ultimate intention to increase the length of the docks to 1,000 feet each.

The extension of Broad street of the city of Philadelphia passes nearly across the center of League Island, and is the street upon which the permanent buildings have been, and will, by the plan, be hereafter erected. This broad and handsome street offers great temptations to ferry-companies and to the neighborhood in the city to secure a right of way through it across the island. Unless the Government can enjoy its own property, and is determined to resist all applications for rights of way across the navy-yard, it had better suspend its work there, and select some spot for a yard where it can have the necessary sole occupancy. A right of way over a navy-yard destroys its value as such. All manner of persons can visit the yard at will at all hours of day and night; millions of valuable property, that it is impossible under such circumstances adequately to guard, are exposed to incendiarism and plunder; little supervision, and no discipline, is possible over employes. The experience of the Government has been very unfavorable to such grants, and neither solicitation nor clamor should prevail to procure them. No necessity can ever exist for a grant of a right of way over the yard, for there are many other points than the foot of Broad street that can be used. Of course, it would be convenient for private parties to have the use of Government property, even if the most serious injury resulted to governmental interests. But the turning of the population of a great city through a navy-yard would be an intolerable nuisance, to be firmly resisted. We refer thus to the matter because the project has already been mooted by interested parties.

CHARLESTOWN NAVY-YARD.

This navy-yard is favorably situated within the defenses of Boston; has at its command the skilled labor and resources of a great city; and has an extensive water-front, part of which has deep water, and the remainder capable of great improvement. It is an important naval station, and should be perfected as such to meet the emergencies arising from the change in the construction and equipment of vessels of war. Wet-basins are needed here for securing and fitting ships, to relieve the water-front and protect the vessels from injury from storms, large rise and falls of tides, and from ice. A naval board in 1869 recommended the purchase of the flats in Mystic River, lying between the navy-yard and the naval-hospital grounds, which have a channel on each side which can be made deep enough. These flats would afford a convenient site for a system of wet-basins, wharves, store-houses, building-slips, and a depot for coal.

A navy-yard as far north as Boston is valuable for sanitary purposes, for the repair of ships long exposed to the pernicious influences of tropical climates.

The navy-yard is well supplied with tools and machinery, and its buildings compare favorably with those of any other yard, except that too much wood has been used in the construction of buildings, increasing the liability to fire. The wooden buildings should be gradually replaced by structures of brick. It is estimated that \$70,000 will put in thorough repair the buildings at this yard. Considerable expenditures are necessary, however, and should be at once made, to put the approaches to the water-front in better order, repair the timber-basin, &c.

The committee deem this yard important, useful, and well located.

NORFOLK NAVY-YARD.

This navy-yard was greatly damaged during the war of the rebellion, but it possesses natural advantages of a superior character. It is situated near the capes of Chesapeake Bay, on the Elizabeth River, and its nearest point is about five miles above the locality convenient for obstructions and their defense against surprise and assault by sea. Situated near the sea, it is as inaccessible to attack as if far inland. The climate is excellent, with a sea-air, and the soil is firm and well calculated for heavy structures. The harbor is accessible at all seasons of the year, and free from ice. Work can be done at this yard all the year round, and more cheaply than in regions of extreme cold and heat; and all the necessary materials for constructing vessels can be readily obtained.

Some of the buildings that were burned during the late war have been rebuilt, but much remains to be done to render the yard adequate to the necessary demands upon it. The area of the yard can be increased by the purchase of the land on the opposite bank of the Elizabeth, probably at the cost of farm-land, and this purchase should be made. Every foot of land on both sides of the river could be utilized, to the great advantage of the Government, in the erection of buildings for the storage of material; the construction, repair, and safe-keeping of ships needed in peace and war; the manufacture of cannon and munitions of war, hemp and wire rope, and other essentials for the naval service. Here should be dry-docks and wet-basins, and all the requirements of a navy-yard on a large scale. The site is an important one, worthy of development, and on good lines by sea and land. By reducing the number of the navy-yards, as the committee propose, more funds will be available to develop those that remain, and the nation should address itself in earnest to this task.

There are about sixty buildings on this yard, including foundry, saw-mill, machine-shop, and workshops. The estimated cost of repairs of buildings is about \$40,000.

NEW LONDON NAVY-YARD.

The site for this navy-yard was conveyed to the Government by the State of Connecticut. It has a water-front on the river Thames of one mile, and a mean breadth of 670 feet. The map of the Coast Survey shows the channel to be very narrow, and along most of the water-front at a very considerable distance from the shore-line. The channel is so narrow opposite the navy-yard that an ordinary-sized Government vessel could not swing at anchor with the tide without striking on either side, and vessels like the Franklin, Wabash, Minnesota, Colorado, Tennessee, New York, and the Iowa class, which draw about 21 feet, and are about 300 feet long, some longer, would need to be handled with care to turn them around at the upper end of the yard without striking.

We give figures taken from the map of the Coast Survey, showing the distance from the shore-line to 21 feet of water in the channel, and the width of the channel between the 21-foot lines on either side, by which the extreme narrowness of the thread of deep water and its distance from the shore will be seen at a glance:

Statement showing width of channel and its distance from shore-line.

Position of lines on which measurements were made.	Distance from shore-line to 21 feet of water.	Width of channel between the 21-foot lines on either side.
	<i>Feet.</i>	<i>Feet.</i>
On a line at the upper end of the yard.....	680	340
On a line 760 feet below the upper end.....	700	410
On a line 1,250 feet below the upper end.....	610	440
On a line 1,650 feet below the upper end.....	650	455
On a line 2,050 feet below the upper end.....	625	510
On a line 2,550 feet below the upper end.....	635	565
On a line 3,050 feet below the upper end.....	600	615
On a line 3,525 feet below the upper end.....	575	675
On a line 4,025 feet below the upper end.....	325	720
On a line 4,425 feet below the upper end.....	265	795
On a line 4,900 feet below the upper end.....	275	800
On a line 5,300 feet below the upper end.....	445	725

As illustrating the narrowness of the Thames at this station, it may be mentioned that the Government authorities have been compelled to request pilots of river-steamers to slow down or stop their paddle-wheels when passing, because the agitation of the water in the narrow space causes the Government vessels moored at the wharf to be injured by chafing.

From the shore-line there is 24 feet elevation in 50 feet. At one point the elevation is 96 feet 3 inches above tide-level. The soil is hard gravel, with boulders and granite dikes. To reduce the hills to the proper level for a navy-yard would be a costly undertaking, and the excavation of basins inside the shore-line prodigiously so. The water at the front is salt, and injurious to iron ships; and to obviate this difficulty the original board of naval officers who examined the site thought these vessels could be drawn up out of the water. Facilities for the supply of iron and coal, which must be used in immense quantities at a constructing and repairing yard, do not exist at this station. The yard is not near a large city furnishing to the uncertain requirements of the Government an adequate supply of labor. It is well known that the employment of mechanics at navy-yards is intermittent, and such employment is a poor reliance for the support of families.

The emergencies of the Government may, and often do, require the sudden employment of large gangs of workmen to speedily fit out ships for sea, who are dispensed with as soon as the job is done until another occasion arises. Where a navy-yard is near a large city men can be thus temporarily employed, to return to their usual pursuits when the emergency is passed, without loss from waiting for more work or distress to their families. But where the work of a navy-yard depends on the transportation of mechanics from a distance, great hardships are produced by every discharge of hands, and the chances of procuring really skilled workmen for such uncertain employment is greatly diminished.

A resident population living off a navy-yard only must be a miserable community in a section of the country where nearly all naval work is necessarily suspended in the fall months, by the severity of the season, only to be resumed in the late spring.

The harbor of New London has a fine, clear entrance from the ocean, from which it is distant about twenty-five miles. This would be an important and valuable consideration in its favor as the site of a navy-yard, if these very facilities of access did not entail difficulties in defense. The defenses of the harbor are Fort Trumbull and Fort Griswold; the first an old-style granite fortress, of little value since modern discoveries in the science of attack and defense, and the other an earth-work on Groton Heights, opposite the town of New London. To protect a navy-yard adequately at this point will require elaborate and expensive works. The Board of Engineers deemed it favorable to the New London station that "there are on either side of the river numerous points upon which iron towers and turrets, armed with guns of the largest caliber, can be erected at moderate cost, and so arranged as to render the entrance of hostile ships impossible, if forts and towers can be constructed of sufficient strength to resist the attacks of ships of modern construction and armament." The committee deem that such works as those described would reach a cost far from "moderate." Cheaper modes of defense are impossible from the accessibility of the harbor, and guns of moderate range would reach the site of the navy-yard from Long Island Sound. The only purpose of the elaborate and expensive system of fortifications sketched by the board is to protect the Government property to be collected to enormous values at the navy-yard. No great city is within the shelter of these numerous and well-appointed works of defense. The expenditure is to be made to enable the Government to create and preserve a navy-yard at a point not otherwise especially advantageous, and to repel the attacks that would be made there only for the reason that it contained Government stores, vessels, and warlike appliances. A navy-yard *per se* is not a means of defense against foreign attack, though it is a favorite object of such attack. It has been assumed that this yard would be useful in the defense of the city of New York. It could only be auxiliary to such defense by means of the vessels that might be prepared at the yard for such purposes; and these vessels could be more expeditiously and cheaply prepared at the Brooklyn yard. Any expenditures that may be necessary, either in fortifications, iron-clad vessels, torpedoes, or torpedo-boats, for the defense of the great city of New York, which so largely concentrates the capital and commerce of the nation, will be cheerfully borne by the people, and the site of such fortifications, or any other modes of protection, may be put in the neighborhood of New London, or at the "Race," or at any other point best adapted to make the defense of that city effectual. The necessity for such fortifications would not, however, be a reason for duplicating the navy-yards within the waters of New York. The committee recommend that no more expenditures be made at this navy-yard, and that the site, with its improvements, be conveyed to the State of Connecticut.

The committee are satisfied that it are contrary to public policy for the Government to accept gifts of land or other property from its citizens. What it needs for public uses it should buy, and be free from any implied or asserted obligation to make expenditures where its real interests forbid them. Such gifts are naturally bestowed to serve local interests by inducing large expenditures of public money at such points, and become a cause of embarrassment oftener than a benefit. The Secretary of the Navy felt called upon, in his last annual report, to direct attention

to the obligation of the Government to make expenditures at the New London yard, implied from its acceptance of the site as a gift. He said:

I again call attention to the obligations of the Government in regard to the naval station at New London, Conn. We are the owners by gift from the State of a large and valuable property at this place, which has never been utilized for want of adequate means appropriate for the purpose.

We agree with the honorable Secretary so far as to admit that the Government should seriously address itself to the difficult task of making New London a useful naval station, or return the gift with the improvements of some value already placed upon it.

KITTERY NAVY-YARD.

This navy-yard, generally known as the Portsmouth (N. H.) navy-yard, is situated on an island within the boundaries of the State of Maine, near the town of Kittery, with which it is connected by a bridge, and is opposite the city of Portsmouth, N. H.

The yard proper has an area of 66 acres, and an available water-front of one mile in extent, a portion of it very deep water, and, along the front, of greater depth than at any other yard in the country, rendering dredging unnecessary.

In 1866, a contiguous island, called Seavey's Island, was purchased, at a cost of \$105,000, containing about one hundred and five acres, and when improved will add a deep-water front of one mile to the yard. There are extensive quay-walls, substantially built of granite, which afford ample space for berthing vessels and landing materials of all kinds. It is otherwise well improved and conveniently arranged for a small yard, supplied with good workshops, tools, and all necessary facilities for the performance of work, all of the buildings being of the best and most substantial character. A steam vessel of war can be built at this yard—hull, spars, engines, and boilers complete.

It has no stone dock, but one of the best floating-docks in the country, with a stone basin built in the best and most durable manner, to receive it; permanent ways with the necessary machinery for taking ships from the dock to the land, making its resources in this respect equal to two dry-docks.

The improvements are mainly on the yard proper, but little having yet been done to improve Seavey's Island. There are, however, two foundries, a number of coal-sheds, a timber-shed, and ordnance building on the island, together with a number of dwellings, and a lake of pure fresh water capable of supplying all the wants of the yard.

A portion of Seavey's Island is quite high and rocky, affording sites for fortifications for close defense of the harbor; as any vessel entering would be compelled to pass almost immediately under the guns of these forts, the fire from which could be directed upon the enemy's decks. A large portion of the island immediately adjacent to the yard proper is of an easy elevation, and can be readily reduced in grade at a small cost, should it be needed.

This island was purchased for two reasons: one, that the original site was too small for an extensive navy-yard, and contiguous territory was needed for the storage of coal and materials, and for the location of certain buildings which, although very necessary, are not desirable in the working part of the yard. Another and important reason was that at the time of the original purchase Congress granted a right of way across the navy-yard to parties owning and occupying Seavey's Island. This franchise in course of time became seriously detrimental to the

public interest, and its annulment was very desirable, but could only be accomplished by acquiring a title to the whole island.

The admirable character of the improvements on the yard proper, its unrivaled water-front with its 1,300 feet of excellent granite wharf, the great value of the station as a harbor of refuge for ships infected with fevers from long cruises in tropical climates, and the numbers of skilled workmen who have been trained in this yard, and in the ship-yards of Maine and New Hampshire, with the abundant railroad facilities for transportation of materials of all kinds, and a harbor easy of access, never clogged with ice, are weighty considerations for retaining this yard.

It should also be stated that the destructive *teredo navalis*, the bane of southern waters, has no existence in the strong current and deep waters of the Piscataqua. This yard without doubt is the most healthy station on the Atlantic coast.

The site and improvements which have been perfected have already cost the Government upward of four million dollars, and should they be abandoned, this immense property would become comparatively valueless. The buildings and other improvements are generally in excellent condition of repair, \$10,000 only being needed to put them in thorough order.

PENSACOLA NAVY-YARD.

This navy-yard should be put in order for possible contingencies in the Gulf of Mexico and the West Indies. A partial appropriation for rebuilding the sectional dry-dock has already been made, and there should be a further appropriation for this, and a moderate annual appropriation for rebuilding the workshops, which were destroyed during the late war. Norfolk is now the most southern navy-yard at which vessels can be repaired. The Pensacola yard is needed for the repair of ships, and should be put in a condition of effectiveness for that purpose. But it is not needed, and would not be available, for construction or manufacturing purposes. To repair the present yard-buildings, quarters, and wharves will cost, as per estimate, about \$54,000.

MARE ISLAND NAVY-YARD.

This is the only navy-yard on the Pacific coast, is within the defenses of San Francisco, and supplied by the resources of that great city. All the conditions are presented here to create a great dock-yard. There is an ample area, an extensive water-front, and solid foundations. The Pacific and Asiatic fleet depends upon this yard for necessary repairs. Congress has always recognized the necessity for one great naval establishment on the Pacific coast, and been liberal of appropriations for permanent improvements, which have been in the main judiciously expended. A dry-dock of the best character is being constructed at this yard, which should be speedily completed. The quay-wall commenced should be continued, and a supply of fresh water for fire and other purposes should be created. The roads should be paved, they now being nearly impassable in the wet season. These are the present principal necessities of this yard. The yard buildings and quarters are reported to be in good condition, and no estimate for repairs is submitted.

NAVAL ASYLUM.

The present naval asylum for disabled officers, seamen, and marines in the city of Philadelphia, near the Schuylkill River, surrounded by a

high wall, is a prison alongside of a ditch, and an uncomfortable, unsuitable, and an unhappy residence for the ancient mariners who are its inmates. They are shut up within its inclosure as completely as if they were in a retreat for the insane, except occasionally when they get permission to go outside of its gates. When outside they find themselves in the streets of a city which has crowded up to their walls, raising the value of the land commercially, but destroying its value as a site for an asylum; are exposed to all its temptations, and are a hundred miles from salt water.

What these veteran seamen need, in order to pass their declining days in comfort, is a location on the banks of some salt-water bay, with access to and use of boats, and within view of passing vessels, so that their surroundings may be those familiar to their profession, instead of being entirely the reverse; and also that their accommodations may be on a scale commensurate with some of the many extensive soldiers' homes now in existence all over the country. Exactly such a place is to be found in the harbor of New London, Conn.

All this may be easily accomplished, without burdening the National Treasury, by selling the present naval asylum and applying the proceeds, which would probably amount to \$2,000,000, to purchasing another site, erecting the necessary buildings, and improving the grounds. The naval-pension fund should also be restored to its integrity, as provided by the act of July 1, 1864, or by putting the interest at the reduced rate, as at present applied to other bonds, 5 per cent.

The expenses of maintaining the naval asylum are required by law to be paid out of the interest of the naval-pension fund. The interest of the naval-pension fund, at 3 per cent. greenbacks, is not now, and has not been since July 23, 1868, sufficient to pay the annual pensions and the expenses of the asylum. For the year 1872-'73, the account stands as follows:

Amount paid for pensions, 1872-'73, Secretary's report.....	\$463,908
Amount paid for asylum.....	65,495
Total	539,403
Interest on \$14,000,000, at 3 per cent. currency	420,000
Amount to be appropriated.....	119,403
Amount of interest on pension-fund, at 5 per cent.	700,000
Deduct expenditures	539,403
Balance.....	160,597

By this common justice to this fund it is relieved from an apparent pauperism which is undeserved, and a balance of \$160,597, even if the interest is paid in currency, is left, to be applied to maintaining the grounds of the new asylum, the purchase of boats, and other necessary items for the comfort of the inmates.

There is no justice in fixing the rate of interest on the naval-pension fund at 3 per cent., especially when the proceeds do not pay the expenses chargeable to the fund. It is very niggard treatment of a body of deserving men, nobly endowed through their own perilous services and those of their fellows. Section 11 of the act for the better government of the Navy of the United States, approved July 17, 1862, repeats the words of the law of 1800, as follows:

And be it further enacted, That all money accruing, or which has already accrued, to the United States from sale of prizes shall be and forever remain a fund for the payment of pensions to the officers, seamen, and marines who may be entitled to receive the

same; and if the said fund shall be insufficient for the purpose, the public faith is hereby pledged to make up the deficiency; but, *if it should be more than sufficient, the surplus shall be applied to the making further provision for the comfort of the disabled officers, seamen, and marines.*

If the spirit of this pledge is observed, there will be no difficulty in founding a sailors' home or asylum on the shore of one of our navigable bays, where the beneficiary can have some degree of comfort in his declining years. The price of the present site, as we have stated, will pay for the fullest appropriate improvements. Reasonable interest on the fund will pay the expenses of maintenance and the naval pensions, and leave a surplus, and the principal can be kept intact "forever."

In this connection, and that of the subject next treated of, the committee suggest that the naval-hospital fund, on which dependence is placed for the maintenance of hospitals, is nearly exhausted. This fund is made up by a tax of 20 cents a month on each officer, seaman, and marine, and stopped rations, and is not self-supporting, especially as it has been made to bear the great burden of erecting hospital-buildings. An annual appropriation of \$100,000 is probably necessary to pay expenses properly chargeable to this fund, in addition to the receipts from ordinary sources. Emergencies like the recent epidemic at Pensacola cause unusual draughts on the fund. By investing the \$14,000,000 to the credit of the pension-fund in Government 5 per cent. bonds, which should be done to carry out the spirit of the laws upon the subject, the present objects supported by that fund could be beneficially secured, and through the expenditure of the surplus in aid of the hospital-fund "further provision for the comfort of the disabled officers, seamen, and marines" could be made. This measure, with the concentration of hospital-work recommended by the committee, would make ample provision for every object designed to be secured by the previous legislation on the subject, and enable Congress to be more liberal than it has yet been in awarding pensions payable out of the interest of the fund.

NAVAL HOSPITALS.

The committee report that the number of naval hospitals is far in excess of the wants of the Government, and that several of them can be abolished without detriment to the service. The necessity for a naval hospital at Washington is very slight. Every sailor brought to the Washington hospital passes by Norfolk, where there is a commodious hospital, located advantageously in a healthful climate. The duplication of expense by keeping both institutions running is entirely unnecessary. If the Washington yard should be abolished, sailors would not be brought here at all. Any expense of sending sick marines to Norfolk by steamboat would be slight compared with those caused by maintaining a separate institution here.

The naval hospital at Annapolis should be closed at once, and the establishment sold. Its pay-roll alone for the year ending June 30, 1874, was \$4,512. The number of patients treated at this hospital during the year ending December, 1873, was 26, and during the previous year 21, out of 3,063 treated last year at all the hospitals, navy-yards, and receiving-ships, and 4,853 for the previous year. The whole number treated at sea and on shore last year was 13,900. These facts show the comparative value of this institution. There is a hospital for the Naval Academy independent of the marine hospital at Annapolis. The situation of the latter is said to be unwholesome. The naval hospital at Philadelphia is situated within the same inclosure as the naval asylum.

If the latter is removed to some proper locality, as it should be, the naval hospital should be sold, with its share of the grounds, and the proceeds be deposited in the Treasury to the credit of the hospital-fund. This hospital can be dispensed with, and the sick usually treated there be accommodated at the Brooklyn, N. Y., hospital, where they can be cheaply and comfortably transported, either by rail or steamboat, or, still better, war-vessels arriving on the coast, bound for the League Island yard, could deposit their sick at Norfolk, or other of the remaining hospitals most convenient to their course, before proceeding to their destination. This would leave on the Atlantic coast three large and commodious hospitals, viz, at Chelsea, Mass.; Brooklyn, N. Y.; and Norfolk, Va. The latter is in urgent need of repair, but has great capacity. If the hospital at New York regularly receives the sick now sent to Philadelphia, some provision may be necessary for further accommodations, to meet emergencies, by adding a wing or story to the present building. For the usual wants of the service this hospital is ample. The hospital at Pensacola was burned at the commencement of the late war, and the wants of the station have since been crudely supplied by the use of a small wooden building in the center of the navy-yard, hastily put up during the war. This building is very inconveniently located, and altogether unfit for its purposes. It is now a mere sickness-breeder, and should be destroyed. As this station is very important for strategic purposes, and in a climate where our sailors are liable to epidemics, a decent hospital should be erected on a proper site. Such a site the Government owns where the former hospital stood, said to be a healthful location. A wooden-pavilion hospital, similar to those in use for the Army, could be built at a moderate cost—say \$50,000—and would be better, in view of climatic conditions and the nature of some of the diseases treated, than a brick or stone structure, costing five times that amount, and liable to be saturated with disease-propagating gasses.

If Congress shall deem that a naval hospital at Philadelphia is a necessity from the presence of an important naval station at that point, the present establishment had better be sold, and a proper building erected on League Island with part of the proceeds.

The grounds around the naval hospital at Chelsea are much larger than required for that institution. The area is 115 acres; but 20 acres are used for the naval hospital, 10 for the marine-hospital at that place, and 20 acres for a magazine. The remainder of the land, of which 20 acres are flats, if judiciously sold in portions, from time to time, would bring a very large sum of money, and greatly relieve the hospital-fund, to the credit of which the proceeds should be placed. The local estimate of the value of this surplus land, if gradually sold as demand should arise, was \$3,000,000. The whole site was purchased by the Government, in 1823, for \$18,000. The growth of business-establishments in the neighborhood has led to some fear as to the safety of the magazine from accidental fire. The apprehension is natural, considering the consequences of an explosion; but their examination of the premises, and the best information they could get, led the committee to think there is no actual danger.

The Naval laboratory at New York seems to be under excellent management, and is very useful in furnishing to the Navy economically the best medicines.

The following figures show the cost of the medical establishment of the Navy at sea, on shore, in navy-yards, at naval hospitals, and at the Naval Academy.

The average strength of the Navy for 1872, including officers, sea-

men, marines, engineer force, and coast survey, amounted to 12,705. There were 14,060 cases of disease treated during the year. Taking the number of all persons in the Navy, the cost for each per year is \$56.74. If the number of cases treated is taken, the cost is \$51.27 each per year.

Amount expended for use of the sick of the Navy for 1873.

Naval-hospital fund	\$135,786
Salaries	5,360
Repairs and improvements—hospitals	25,000
Surgeons' necessaries, &c	40,000
Civil establishment	75,204
Contingent	25,000
	<hr/>
	306,350
Pay of Chief of Bureau	5,000
Pay of medical directors	54,000
Pay of medical inspectors at sea	30,800
Pay of medical inspectors on shore	25,600
Pay of surgeons at sea	80,000
Pay of surgeons on shore	70,000
Pay of passed assistant surgeons at sea	28,000
Pay of passed assistant surgeons on shore	25,200
Pay of assistant surgeons at sea	68,000
Pay of assistant surgeons on shore	28,000
	<hr/>
	720,960

The New York naval hospital is the most important establishment of the kind belonging to the Navy. The following table, for which the committee is indebted to Medical Director Williams, of that institution, shows the daily average number of patients in this hospital from 1866, with the daily average cost per man for the same period :

	Daily average number of patients.	Daily average cost per man.
1866 First quarter	153	\$0.679
Second quarter	172	.748
Third quarter	145	.630
Fourth quarter	133	.912
1867 First quarter	147	.766
Second quarter	119	.690
Third quarter	88	.610
Fourth quarter	107	.865
1868 First quarter	112	.631
Second quarter	91	.647
Third quarter	70	.698
Fourth quarter	66	.938
1869 First quarter	62	.835
Second quarter	56	.683
Third quarter	73	.658
Fourth quarter	75	1.030
1870 First quarter	74	.790
Second quarter	46	.777
Third quarter	88	1.198
Fourth quarter	48	.778
1871 First quarter	55	.776
Second quarter	40	.805
Third quarter	77	.686
Fourth quarter	46	1.220
1872 First quarter	48	.775
Second quarter	50	.768
Third quarter	52	1.020
Fourth quarter	56	.645
1873 First quarter	59	.597
Second quarter	53	.588
Third quarter	61	.469
Fourth quarter	70	.607
	<hr/>	
	32) 2568 (80+	32) 24.367 (0.761+
	256	224
	<hr/>	
	22	196
		.192
		<hr/>
		47
		32

An extract from the report of the Commissioners of Charities and Corrections, of New York, given below, showing the daily average number of patients, and the daily average cost per man of all patients under the charge of the commissioners at New York City, shows that the cost of subsisting patients is very much greater at the small hospitals than at the large ones, and accounts for the cost of running naval hospitals.

	Daily average number of patients.	Daily average cost per man.
Centre Street Hospital.....	22	\$1. 3375
Bellevue Hospital.....	849	. 3011
Charity Hospital.....	745	. 3536
Small-pox Hospital.....	136	. 4905
Fever Hospital.....	19	. 7193
Incurables.....	101	. 2637
City Lunatic Asylum.....	1, 530	. 2462
Epileptic and Paralytic.....	117	. 2858
Randall's Island Nurseries.....	574	. 2177
Infants' Hospital.....	415	. 2890
Soldiers' Retreat.....	271	. 2130
Inebriate Asylum.....	5	. 5893
	12)4, 766	12)5. 2367
	397+	. 4363 +

These tables furnish a conclusive argument in favor of a few large hospitals at important points, rather than the many now scattered along the coast, without sufficient employment for any, and very little for some of them.

TORPEDO STATION.

This station, at Newport, has been brought up to a high condition of efficiency by the able and energetic officer in command. The committee were much interested in the practical exercises which they witnessed there in handling, launching, and exploding torpedoes. All the manual labor in the preparation of chemicals, the manufacture of fuses and explosives, is performed by the young officers sent there for instruction, as also in handling and exploding torpedoes, which we witnessed. The officers are thus made familiar with the composition and use of these destructive engines of war, and prepared to make this important branch of service, now so highly prized by all civilized nations, effective in case of need.

NAVAL PRISON.

The committee recommend the erection of a naval prison for the confinement of sailors and marines under sentence of courts-martial, or that provision be made for the reception of these prisoners at the military prison at Leavenworth. By our observation these unfortunate beings are crowded into cells at the marine barracks, two men, of necessity, placed in a cell not large enough for one, to the peril of their health and the promotion of indecency and vicious habits. Bad ventilation and drainage, and the crowding in of prisoners so closely together, corrupts the air and made a brief visit to these unsavory dens extremely unpleasant. Here those under sentence are confined for two or three years together, and must emerge from such surroundings, if not broken down in health, certainly unimproved morally by the discipline to which

they have been subjected. A properly regulated prison encourages a hope of reformation. Here no means of reformation are possible. The prisoners necessarily pass their time in listless idleness, while under better conditions their labor might be utilized to the advantage of the Government and the incalculable gain to the prisoners, to good morals and decency.

Our observations led us to believe that the naval authorities do the best they can with the means at their disposal; and the prisoners are as well treated and cared for as is possible without an appropriate place of confinement. This subject deserves the immediate attention and action of Congress.

O



IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. FERRY, of Michigan, submitted the following

REPORT :

[To accompany bill S. 1206.]

The Committee on Post-Offices and Post-Roads, to whom was referred the petition of Nathaniel G. Smith, postmaster at Flemington, N. J., submit the following report :

The petitioner testifies under oath that on the night of the 12th of November, 1873, the post-office at Flemington, Hunterdon County, N. J., was entered by burglars, and the safe of said office broken open and robbed of postage-stamps to the amount of eight hundred and forty-five dollars, and other valuables to a large amount ; and that petitioner has been careful and duly diligent in his efforts to protect the property under his care ; that the post-office was in a brick building, supposed to be well secured, and that no ordinary precaution on his part could have prevented the robbery.

The fact of the burglary is also testified to by Elmer Smith, assistant postmaster, John Lyman, David Van Fleet, judge of the court of common pleas, J. P. Rittenhouse, sheriff of said county, and a petition signed by sixty-three of the citizens of the village of Flemington.

It further appears from the affidavit of petitioner that, on the day following the robbery, he notified the Post-office Department of the fact, and on the 17th of the same month forwarded a detailed statement of the losses to the Department.

The Third Assistant Postmaster-General estimates the probable amount of stamps on hand at the time of the robbery at \$1,111.64.

In view of the facts as shown by the papers, your committee recommend the passage of the accompanying bill for petitioner's relief.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 1205.]

The Committee on Pensions, to whom was referred the petition of Hiram Sawtelle, guardian of Lydia J. Church, praying to be allowed a pension, submit the following report :

The said Lydia is the orphan child of the late Nathaniel G. Church, who was a private in Company E, Third Regiment Maine Volunteers. Both parents being dead, this minor daughter was admitted to the pension-rolls, on December 20, 1865, and the pension was suspended November 16, 1867, on the facts presently to be stated. The Commissioner having refused to restore the pension, an appeal was taken to the Secretary of the Department of the Interior. In 1869, the Secretary affirmed the decision of the Pension-Office. An appeal is now made to Congress. The case turns entirely upon the point of the illegitimacy of the child.

It appears from the evidence that the father, Nathaniel G. Church, was first married to Margaret Powers, and lived with her some six months, when she left him, and, without obtaining a divorce, married one Hardy, with whom she lived and cohabited up to the period of her death, which occurred October 15, 1872. Church, without obtaining a divorce, married one Lydia Leighton, in March, 1855, by whom he had the child in question. The mother died April 2, 1861. The soldier again married in October, 1861, one Hannah Haines, who died in the spring of 1865. Church always recognized Lydia as his lawful child, and by will bestowed all his worldly goods upon her.

The proof tends to show that the child never knew in her father's life-time of the first marriage, and, since the suspension of the pension, she has been dependent upon her relatives for support. It further appears that, though no divorce was obtained by Church, he had sufficient grounds to have obtained one, on account of the desertion and adultery of his first wife.

On the strict legal view of the case, the Department undoubtedly decided correctly that the child was illegitimate; but the committee are of opinion that, equitably, she is entitled to the pension, (the other facts essential to make out the case being proved,) and accordingly report herewith a bill restoring the pension from the time of its suspension.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3191.]

The Committee on Pensions, to whom was referred the bill (H. R. 3191) granting a pension to Elizabeth Brannix, have had the same under consideration, and submit the following report :

Claimant states that she is the widow of the late Capt. George H. Brannix, who died in the city of Philadelphia on the 29th of April, 1870, from wounds and disease contracted while in the military service of the United States, during the late rebellion; that said Brannix first served as a private soldier, in the Regular Army, for two terms of enlistment, viz, from the year 1853 to 1858, both inclusive, during which time his regiment, 1st Dragoons, now 1st Cavalry, crossed the plains to California, under the command of Maj. Geo. H. Blake, and was honorably discharged from the service in March, 1858; that afterward he was appointed commissary and quartermaster to Lieut. E. F. Beale's camel expedition across the plains, in which service he remained until September, 1859, when he returned to the city of Philadelphia, where he resided until the breaking out of the rebellion; that the said Brannix then immediately took part in raising a squadron of cavalry, and tendered his services, with the same, to the Government, which, however, were not accepted, as cavalry at that time were required to furnish their own horses and equipment; that, on the 16th of July, 1861, the said Brannix was authorized to assist in recruiting Company C, Third Pennsylvania Cavalry, which company was mustered into the service August 1, 1861, and that he also assisted in organizing said regiment; that, on November 19, 1861, the said Brannix was promoted to captain Company M, of the regiment, it being the first promotion in the regiment; that he was in several engagements with rebel cavalry, and was wounded near Vienna, Va., in November, 1861, when, on account of debility and suffering from wounds, he was obliged to resign, by the advice and direction of the medical director and regimental surgeon; that the said Brannix was subsequently appointed a captain in the Invalid Corps, and remained in this arm of the service, with a short interval, until about January 21, 1865, when he was again obliged to resign, still suffering from the wounds received.

Claimant represents that she has no means of subsistence for herself and family of five children, all under thirteen years of age, except what she can earn by her own labor.

Claimant filed her application for pension in the proper office, in August, 1871, which has never been rejected by the Commissioner. The

application was still pending, awaiting further proof on certain points, when the papers were withdrawn, April 7, 1874. There seems to have been scarcely any evidence touching the service, cause of disability, and death of claimant's husband, filed with the application. It appears that, on June 25, 1872, the Commissioner of Pensions notified claimant's attorney that he could not proceed with the case until evidence, deemed satisfactory by the Adjutant-General United States Army, shall have been filed in his Office to establish the service and rank of the deceased.

The Adjutant-General, in response to inquiries from the Commissioner of Pensions, under date of 19th October, 1871, states that there is no evidence on file in his Office that George H. Brannix was mustered as captain Company M, Third Pennsylvania Cavalry. Thereupon the Commissioner called upon claimant for the commission of her husband, who answered that the commission was destroyed, being with other papers, in the office of E. B. Jackson, 707 Sansom street, Philadelphia, which was burned in May, 1872. Mr. Jackson testified to the destruction of the papers of claimant's husband. The Commissioner again applied to the Adjutant-General United States Army for such evidence as the records of his Office could furnish in regard to the rank and muster of the said Brannix, upon which application is indorsed the following, under date of April 25, 1873:

George H. Brannix was mustered in as first lieutenant Company C, Third Pennsylvania Cavalry, to date from August 1, 1861, and as captain (by office muster) to date from November 19, 1861. Roll for March and April, 1862, reports him absent, sick, with leave. Same for May and June, 1862. His resignation was accepted by Special Orders No. 197, dated July 8, 1862, from headquarters Army of the Potomac.

The Adjutant-General United States Army, under date of 22d April, 1874, informed the Commissioner of Pensions that the said Brannix accepted appointment as captain Veteran Reserve Corps, November 13, 1863, and resigned July 11, 1864, and was re-appointed in the same corps October 3, 1864, and was mustered out by orders from his Office, dated July 16, 1866. It is thus seen that the evidence in regard to rank and service of claimant's husband is sufficiently established; but there is no evidence whatever tending to show how, when, or where the soldier was disabled in the service, either by wounds or sickness, nor when or of what disease he died. The Adjutant-General's report shows that he was twice absent from his regiment on sick-leave, but there is no evidence that disability resulted from either attack. There is no hospital record of any treatment while in the service, nor certificate of any physician touching the condition of deceased on his retirement from the service, or of his last sickness and death.

Inasmuch, therefore, as the case was still under examination before the Commissioner when the papers were withdrawn, the committee ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 413.]

The Committee on Pensions, to whom was referred the bill (S. 413) for the relief of Alice Aide, have had the same under consideration, and respectfully report:

This bill provides for paying to Alice Aide, the mother of John Aide, a soldier in Company G, Twenty-seventh Wisconsin Volunteers, arrears of pension from the date of the death of John Aide in the service, November 2, 1862, to February 23, 1872, at which latter date a pension was granted to the mother on account of dependence upon her son. The mother did not make application for pension until February 20, 1871, and did not file final proof upon which the pension was granted until February 23, 1872.

By the sixth section of the act of 1868, five years having elapsed between the death of the soldier and the application for pension, the mother was entitled to pension only from the date of the filing of the final material proof, February 23, 1872. This case is not different in principle from all others against which the statute of limitations runs, and cannot, consistently with the policy of the pension-laws still in force, be differently regarded by the committee.

It is therefore recommended that the bill be indefinitely postponed.

C

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mrs. Mary B. Hook, widow of the late Lieut.-Col. James H. Hook, beg leave to report:

That the petition does not claim that Colonel Hook died of wounds, injuries, or disease contracted in the service. The testimonials on file in the case are of the most honorable character, and show Colonel Hook to have been an excellent citizen and an able and efficient officer of the Army, who served his country long and faithfully in the field and in the various military bureaus. He was a soldier in the war of 1812, but no evidence accompanies the petition to show that the petitioner was intermarried with him prior to the peace of 1815. We regret to report that no ground is shown for granting a pension under existing pension-laws, and as we do not feel at liberty to recommend a departure from the spirit of those laws, now generally accepted as wise and liberal, ask to be discharged from the further consideration of the case.

C

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Hiram Bateman, late a private of Company I, Third Regiment Michigan Volunteers, praying to be admitted to the invalid pension roll, have had the same under consideration, and make the following report :

Petitioner enlisted into the said regiment about May 13, 1861, at Grand Rapids, Mich., and was discharged at camp near Harrison's Landing, Va., on the 17th July, 1862, upon surgeon's certificate of disability.

Petitioner alleges that he received an injury, while in the service and in the line of duty, a few days before the battle of Malvern Hill; he had been detailed as nurse in hospital, and sent with other nurses and non-combatants from Savage Station to James River, accompanied by Captain Whitney, of said regiment, and while jumping over a boggy place with poles, with his company soldiers and nurses, he slipped and fell, striking on some chunks in the left groin, and was thus, then and there, so disabled that he did not proceed farther that day, and from that time forward has experienced more or less pain in that groin, but did not know that he was much injured. Petitioner further states that, owing to the hardships and exposures incident to camp-life, he had contracted diarrhea, which afterward became chronic; that he unquestionably had it when discharged. He says that the pain in his groin continued from the time of the injury until January, 1863, when he was informed by physicians that "hydrocele" was apparent, and it gradually grew worse, until it had, when he made application for pension, in March, 1872, become so large as to permanently incapacitate him for severe manual labor; that the diarrhea continued upon him, and at times bad.

The foregoing allegations not being supported by the record evidence, petitioner filed with the Commissioner of Pensions, in support of his claim, the affidavits of three physicians, one of whom was the examining-surgeon who passed petitioner for muster, when he was recruited, and testifies that his brother, D. Millard Bliss, and himself examined petitioner with reference to his being fit to be accepted as a recruit, and found him free from hydrocele at the date of enlistment, and he was then, to human view, sound.

Dr. W. B. Morrison, assistant surgeon of the Third Regiment Michigan Infantry Volunteers, testifies that petitioner, in 1862, during the movement of the army upon the James River, received an injury on the march in his left groin, and was also attacked with diarrhea in the

winter of 1861 and 1862, while in camp and on the march from Yorktown, owing to exposure incident to camp-life at that time; that deponent treated him for diarrhea, which subsequently became chronic, and also for such injury, which afterward developed into hydrocele; has no doubt but that said diseases were both contracted while in service and in line of duty, and without any fault of petitioner.

Dr. L. E. Barnard testifies that he is well acquainted with petitioner, and prescribed for him in the spring of 1863, several times, for hydrocele, which was located in the left groin, and which was then beginning to appear; that he also prescribed for petitioner for chronic diarrhea, at which time both deponent and petitioner were residing in Lamont, Ottawa County, Mich.; that said hydrocele was not of long standing, apparently; that deponent also doctored petitioner for said diseases in 1864. Also the affidavit of A. J. Whitney, late captain of Company G, Third Michigan Volunteers, who had command of the detachment of nurses, and others, on the march from Savage Station, and was present when petitioner fell, as alleged, and injured his groin. Petitioner also filed the affidavits of G. Luther, I. Babcock, John Rice, and R. Mickam, neighbors and acquaintances of petitioner, who had known him for many years before he enlisted into the service, who testify negatively to his sound bodily condition, in respect to chronic diarrhea and hydrocele especially, at and before he entered the service. Neither of the witnesses ever heard him complain of having either of said diseases before that date, and do not believe he had. Had such been the case, they certainly would have heard of it, or in some way known it.

The foregoing testimony was submitted to the Adjutant-General, United States Army, for the purpose of procuring a change of record, but was judged to be insufficient; whereupon the Commissioner of Pensions, on April 25, 1874, rejected the application for pension on the ground that the medical evidence shows that no disability existed from chronic diarrhea; and as the hydrocele first appeared, according to the statement of petitioner, in January, 1863, the evidence does not prove that it originated, as asserted, from any injury received in July, 1862.

The certificate of disability for discharge contains the following report of the commanding officer of the company touching petitioner's fitness for the service: He says, "During the last two months said soldier" (previously described) "has been unfit for duty sixty days; has never been considered fit for duty in the ranks; has been hospital nurse most of the time since he enlisted, and has not been fit for such duty for the last sixty days; generally debilitated;" and the assistant surgeon of the regiment certified that he found petitioner "incapable of performing the duties of a soldier because of general debility, resulting from his advanced age."

Petitioner was examined at Grand Rapids, Mich., on June 15, 1872, under the direction of the Commissioner of Pensions, by a board of surgeons, Doctors G. R. Johnson and S. R. Wooster, who certify that they carefully examined petitioner, who is an applicant for invalid pension, by reason of alleged disability resulting from hydrocele and chronic diarrhea, and gave the following description of his condition, to wit: "Age, 56; pulse, 74; respiration, 18." "Applicant says he contracted diarrhea in the winter of 1861, which assumed the form of chronic diarrhea, from which he has never been entirely free, although there is but slight evidence of its existence at this time. Disability from this cause, none. Injured in left groin, by falling, in 1862, which he says resulted in hydrocele of left side, which still exists, of a large size, but we are unable to say whether it resulted from the injury or not, and can

see no reason why it cannot be permanently cured by proper treatment. Disability from this cause, one-half."

In addition to the unfavorable testimony thus shown from the official records and examining surgeons, the report of the Adjutant-General, United States Army, from the rolls of Company I, Third Regiment Michigan Volunteers, shows that for the months of November and December, 1861, petitioner was detailed on recruiting service, per order bearing date October 25, 1861. Roll for January and February, 1862, reports him nurse in regimental hospital. Roll for July and August, 1862, reports him discharged, on surgeon's certificate of disability, July 17, 1862.

While it is possible that petitioner's disability is the result of injury received while in the service, in the line of duty, yet it is not very probable. It appears that he was but little exposed to the ordinary hardships of campaign-life, and was actually unfit for duty in the ranks from the time he entered the service. He was above the military age, and was from that or other causes much debilitated. The records do not show that he was treated for any injury or disease while in the service; and, though the assistant surgeon of the regiment testifies that he treated petitioner, while in hospital, for both the injury in the groin and for diarrhea, and expresses the belief that the soldier's present disability is the result of the injury and attack of diarrhea, the committee, on a comparison of the testimony, most of which, in support of petitioner's claim, is of a negative character, conclude that he was unfit for the service when he entered it, and must have known the fact, which was so speedily demonstrated. Besides, the committee cannot overlook the fact that most of the affidavits are in the same handwriting, and appear to have been written out in full by the attorney of petitioner; and while the committee have no disposition to charge any one with testifying untruthfully, yet, perhaps, the testimony is stronger than it would have been had the several witnesses written out their own statements. There may be some excuse for some of the witnesses, who are, perhaps, farmers, but the physicians and officers are supposed to be quite competent to write out their own statements.

In view of these facts, and of the fact that the disability of petitioner is, by the highest medical authority, regarded as only one-half, and temporary at the same time, the committee ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mountjoy Browning, late a private in Company A, Tenth (changed to Third) Regiment Missouri State Militia Cavalry, have had the same under consideration, and submit the following report:

Petitioner states, under oath, that he enlisted in said company and regiment at Louisiana, Mo., on the 16th February, 1862, and was discharged at hospital, Camp Fritz, near the place where he entered, on the 24th of July, 1862, upon surgeon's certificate of disability. That said disability consisted of a wound received while in the line of duty. About two or two and a half months before the date of discharge, while on drill, in making a charge, his horse came in collision with that of one of his comrades, bruising his leg severely, and rupturing the blood-vessels, which have ever since remained incurable, and which disabled him in a great degree from manual labor. In support of the foregoing statement, petitioner produces the affidavits of Dr. H. E. Jones, assistant surgeon of the regiment, and John Duncan, a private of the same company and regiment to which petitioner belonged. Dr. Jones attended petitioner in hospital while the regiment remained at Camp Fritz, and states that the injury was not considered dangerous at the time, but was aggravated by petitioner's remaining on duty after the occurrence. He cautioned greater care in the use of the leg, or warned petitioner that he might suffer seriously from the wound thereafter. The doctor further states that petitioner is entirely disabled for military duty by said injury to his leg, and considers that it was sufficient cause for his discharge. He does not know what surgeon gave the certificate upon which the discharge was predicated. When the regiment moved from Camp Fritz, petitioner was left in hospital there. But the doctor remarks, that if petitioner had fever afterwards, not the result of said wound, it was cumulative as to disability, and not the original or prime cause of discharge.

The foregoing affidavit, as well as the amended petition in the case, discloses the fact that claimant was discharged on account of disability resulting, not from the alleged injury to his leg, but from fever; and it is admitted by claimant that he never made any application to the Pension-Office, because his application for bounty developed the fact that

"a false and erroneous report of the cause of his disability and discharge was made."

It is further shown by claimant's final petition, in explanation of the statements and omissions in former petitions and applications for bounty, that he was exercising under the command of Captain Owens at the time of the injury, but cannot fix the precise date. He did not go into hospital immediately, because, being in robust health, and anxious to do his whole duty as a soldier, continued on duty until about five or six days afterward, when the company of Captain Owens and one other company of the regiment were ordered to Wellsville, under command of Major Woodson, for the purpose of guarding the North Missouri Railroad. During all of which time, instead of claimant's wound getting better, as he expected, the inflammation increased by the marching and duty on horseback, so that from Wellsville he was ordered to Louisiana, and into hospital.

Claimant reports that he did not more speedily report the injury which he sustained by the collision, because he did not consider it sufficiently dangerous to go into hospital, but says that *it was known to the soldier with whom he came in collision, but whose name he does not now remember, and to Captain Owens, who is dead, and to a number of his comrades, some time after the occurrence, and at the time of being ordered to return to camp as unfit for duty.*

It is unfortunate for petitioner that the testimony of those having knowledge of the injury at the time it is alleged to have occurred could not have been procured before they passed away or beyond his reach. Private Duncan's testimony, before referred to, amounts to little. He was with the company on the march to Wellsville from camp Fritz, and states that after several days' service around Wellsville, petitioner became so much disabled from a wound or sore leg, caused by a collision of horses on drill at camp Fritz, that he was pronounced unfit for duty. All that this witness seems to have known about the injury to claimant's leg was manifestly obtained from claimant himself. He knew nothing of the occurrence before leaving camp Fritz, nor, so far as can be seen from the testimony, did any one else. Dr. Jones, who treated petitioner for a time, seems to have had no other knowledge of the cause of the injury than the statement of petitioner. And it will be seen by the several amended statements, prepared to meet objections, and to supply further testimony, that claimant nowhere refers to the condition of his limb before enlistment. If it was sound, it is a little odd that so important a fact has not even been stated by himself, nor testified to by any one. Petitioner does state, to be sure, that he was in robust health at the time he received the injury. So he may have been, as to his general bodily condition, and still have had incipient enlargement of the veins of the leg or legs, which active duty soon developed so as to unfit him for service in the field. Varicose veins are not uncommon, but, with care, do not ordinarily disable one for manual labor. Undoubtedly one so afflicted is unfit for military duty.

Seeing that petitioner was only fit for duty a little over two months, and that in camp preparatory to marching to the front, and that he broke down on the very first active duty assigned the company, and seeing also that no record evidence of the injury complained of can be produced, nor the testimony of any living witness, together with an absence of any report of his bodily condition on entering the service, the committee conclude that the claim was properly rejected at the Pension-Bureau. It is inadmissible here, and the committee ask to be discharged from the further consideration of the petition.

Since preparing the foregoing report, a response to the application made to the Surgeon-General United States Army, has been received, which shows that petitioner was discharged on account of "varicose veins," but no information as to the origin of the disease seems to be attainable from the records of the War Department.

The petitioner seems to have been misled in respect to the report of his case by the surgeon who prepared the certificate of disability for discharge. But the case stands practically as it did before this last report from the Surgeon-General was received.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY, from the Committee on Pensions, submitted the following

REPORT :

The Committee on Pensions, to whom was referred the petition of George W. Coffin, for pension, report :

That petitioner, George W. Coffin, presents no evidence in support of his petition, nor are the facts stated in the petition supported by affidavit in any manner or by any person. A few persons, who seem to know petitioner, express the opinion that he ought to be granted a pension, and a hope that he may receive one. Something further, however, is held to be necessary to justify the committee in recommending a favorable consideration of the petitioner's wishes to the Senate. We therefore ask to be discharged from the further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT :

[To accompany bill H. R. 3715.]

The Committee on Pensions, to whom was referred the bill (H. R. 3715) granting a pension to Sarah Bacon, have had the same under consideration, and submit the following report :

That the evidence in the case shows that Sarah Bacon is the sister of Capt. Albert G. Bacon, Third Kentucky Cavalry, who was killed in action about the 25th of December, 1861, at Sacramento, Ky. That Captain Bacon left no widow, children, father, or mother, him surviving. That, up to the time he entered the Army, he and his sister named in the bill lived together in affluent circumstances, the joint owners of a large number of slaves who were emancipated by the war. That Miss Sarah Bacon is now over seventy years of age, and in indigent circumstances, and that a pension has been granted to no one on account of the death of her brother, Captain Bacon. The only question presented for consideration is the one of dependence. Clearly it is shown Miss Bacon was not at the time of the death of her brother dependent upon him for support, but, if it could be made by the most liberal construction of the law and evidence to appear that she was, another provision of the pension-law would seem to be fatal to the claim.

In the case of either sisters or brothers dependent upon a brother for support, the law is imperative that the orphan brother or sister must be under sixteen years of age. If it be urged that the case under consideration is one of peculiar hardship, it is held to be a sufficient reply to such appeal that the committee, having a due regard to existing statutes upon the subject, now generally accepted as wise and liberal, do not feel at liberty to recommend a departure from their spirit; and therefore recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT :

[To accompany bill H. R. 1241.]

The Committee on Pensions, to whom was referred the bill (H. R. 1241) granting a pension to Joseph V. Cartwright, report :

That the evidence establishes that the widow of the father of Joseph drew a pension at the rate of \$8 per month, on account of the death of her husband from disease contracted in the service during the late war, until her remarriage ; and that from that date her three minors drew pension at \$2 per month increase to each one until the ages respectively of 16 years ; that Joseph is now about 19 years old. Pension is asked for him on account of impairment of his intellect.

The policy of our pension-laws, now well settled, is that all minor children under the age of 16 years shall enjoy whatever gratuity would inure to the widow if living and unmarried, but it has gone no further for whatever reason. It is the age recognized as justly terminating the period of dependence, and the committee does not feel that it would be prudent to change or extend the limit. In this instance it is asked on account of imbecility. Once we change the policy, it is not difficult to foresee every imaginable misfortune to befall the human family might not be insisted upon as reason for a continued departure from it.

We therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY, from the Committee on Pensions, submitted the following

REPORT :

The Committee on Pensions, to whom was referred the petition of Samuel Adams for a pension for services in the war of 1812, report :

That it appears, from papers on file in the office of the Commissioner of Pensions, the claim of Alexander Hanna, of Texas, a sergeant in Captain J. Tremble's company of Tennessee militia, in the war of 1812, was allowed for his services as a soldier from the 14th of October, 1814, to the 5th of April, 1815, a period of 183 days. The claim of Sergeant Hanna was supported, among other proofs, upon his own affidavit as to his time and length of service; and the muster-roll of Captain Tremble's company verifies the statement of Hanna as to this enlistment, service, and discharge April 5, 1815. Subsequently to the allowance of pension to Hanna, some time in 1872, Samuel Adams presented a claim for pension to the Commissioner of Pensions for his services in the war of 1812 as a private soldier in Captain Tremble's company and makes the necessary affidavits of loyalty, and, in support of his claim as a substitute for Hanna, from the 1st or 2d of January, 1815, to the 4th of March, 1815, and for a period of more than sixty days. The muster-rolls do not show the name of Samuel Adams as a soldier or substitute in Captain Tremble's company. He utterly fails to produce any military record of service. Two land-warrants have issued for 80 acres each to Hanna—none to Adams. This claim rests upon his own affidavit, letters, and statements, unsupported by any evidence, except the replies under oath of Hanna to certain interrogatories presented to him in 1874 by Adams.

To these written questions, Hanna replies that Adams was a substitute for him in Tremble's company from January 1 or 2, 1815, to April 5, 1815, when the company was discharged from the service. That he paid Adams \$10, and furnished him some clothing, when Adams took his place as a soldier in Captain Tremble's company, and admits that he did not join the company or serve with it again after Adams took his place. No further proof appears in the case. It is plain if the last statement of Hanna be correct, each might have received a pension, as the term of service of each was over sixty days. The difficulty presented is to reconcile the contradictory statements of Hanna, both under oath. This first statement is supported by the military record; the second is supported only by the affidavit of Adams, who is himself a claimant for pension. While we feel some hesitation in reporting adversely in this case, we think prudence requires that the petitioner should have presented some corroborating proof of his service as a substitute beyond the sworn statements of Hanna.

We therefore ask to be discharged from the further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill S. 1080.]

The Committee on Pensions, to whom was referred the bill (S. 1080) granting a pension to John W. Caldwell, private Company E, Seventy-fourth Regiment Indiana Volunteers, report:

That John W. Caldwell was a soldier about eighteen months. That he was discharged from the service, in hospital, January, 1864, for disability resulting from deafness. The evidence shows that he received a flesh-wound at the battle of Chickamauga, from which he has wholly recovered, but that his deafness has increased, and that he hears with difficulty, and is almost disqualified in consequence of this disability. The trouble in the case is the proof of partial deafness when he entered the service, which he admits. We think, however, this, as being the cause of his present extreme deafness, is overcome by the surgeon's certificate of disability at the time of his discharge from the service, and the additional certificate of the surgeon who recently examined his case, and the testimony of the captain of his company; and therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 1722.]

The Committee on Pensions, to whom was referred the bill (H. R. 1722) granting a pension to Martha Wold, submit the following report :

The only question presented for consideration is one of dependence of the mother upon her son, Engeburt Wold, private soldier in Company H, Thirty-sixth Regiment Illinois Volunteers. All the other facts necessary to justify a pension are fully established. Several witnesses testify that both the father and mother had been for years dependent upon this son for support in Norway, from which country the family emigrated to America in 1864. The son came some four months in advance of the others, and at once enlisted as a soldier and served a few months, until some time in the spring of 1865, and died of disease contracted in the service. The trouble seems to have been at the Pension Bureau that the proof does not establish contributions from the soldier to the support of the mother after arrival in the United States and enlistment in the service. The evidence, however, shows, and we think satisfactorily, as an explanation of this omission, that the mother having arrived in the country some four months after the son, and not knowing the language of our people, failed to ascertain the whereabouts of her son ; and for a like reason the son, as we may reasonably conjecture, would have had great difficulty in learning the place of residence of his parents, and of contributing anything to their support. It seems the whole family was very poor, came to the United States on borrowed money, which was repaid out of the bounty and pay received for the services of the son.

We therefore recommend the passage of House bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 3708.]

The Committee on Pensions, to whom was referred the bill (H. R. 3708) granting a pension to Eunice Wilson, mother of John C. Wilson, report :

A careful examination of the evidence shows that John C. Wilson enlisted in the service as a private soldier January 28, 1862, in Company D, Forty-ninth Regiment Illinois Volunteers; was captured by the enemy July 1, 1863, near Germantown, Tenn., while outside of the lines of the camp, gathering fruit for the use of his mess, under an order from one of the corporals of the company, approved by the captain of the company, and approved by the commanding officer of the camp or post; was held as a prisoner of war about sixteen months; paroled at Savannah, Ga.: sent to hospital at Baltimore, and sent home to Hancock County, Illinois, on thirty days' furlough, on account of chronic diarrhea, and died April 19, 1865. It clearly appears the disease of which the soldier died was contracted in the service, or after he entered the service, and while a prisoner of war. The mother's dependence upon her son for support is satisfactorily established by the proof, and is conceded by the Secretary of the Interior on appeal of the claim from an adverse decision by the Commissioner of Pensions. The claim of the mother was finally rejected upon the point that the disease of which the soldier died was not contracted while he was in the line of duty. To sustain this conclusion it is claimed the soldier when captured was outside the lines of the post, voluntarily, for the purpose of gathering fruit. The captain of the company certifies under oath, July 13, 1872: "He was taken prisoner July 4, 1863, near Germantown, Tenn. He, with two other privates, went out of the lines under command of Corporal M. R. Kell, for the purpose of getting fruit for the men of their mess. Their authority for passing out of camp was signed by myself, as commander of company, and countersigned by the commander of the post, and they were captured while in the line of their duty." Upon this point no other evidence appears in the case. If the facts are as stated by the captain of the company, it is not to be denied the soldier was lawfully beyond the lines of the camp. True, he may have volunteered to go, but he nevertheless went under an order of his superior officer, and for a lawful purpose in military law. So far as the soldier was concerned, it was a legitimate and perhaps a necessary purpose for

which he passed the lines. Without extending the argument upon this point, it is enough to say, there was no purpose upon the part of the soldier to violate military law or orders. It was a perilous venture, and in the end doubtless caused the loss of his life. His claim was rejected by the Commissioner of Pensions upon the assumption that the act of passing the lines for the purpose stated was voluntary. This, we think, under the evidence before us, is doubtful, if not positively contradicted.

If, as we believe, he was ordered to go, then the soldier was in the line of his duty, and we recommend the passage of the bill, with accompanying amendment.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 3277.]

In the case of Robert D. Jones, Company B, Third Regiment Pennsylvania Reserves, after a full and careful examination of all the evidence on file in the Pension-Bureau, I am satisfied the disease of the foot, from which the bones had to be removed, after two years' faithful service in the field and in several severe battles, with a severe spell of typhoid fever, in consequence of which disease his eye had to be removed, and his long suffering in hospital until he was discharged with his regiment in June, 1864, at Philadelphia, and his enfeebled condition since, which two attending physicians and the officers of his company certify originated in the service and will be permanent, and finally lead to his death, that the bill ought to pass, and recommend the adoption of the House report, as it sufficiently explains the case.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill S. 1213.]

The Committee on Pensions, to whom was referred the petition of Nathan Upham for a pension, have had the same under consideration, and report:

That, in addition to the evidence on file in the Pension-Bureau, the testimony of the petitioner, of Dr. Chauncy S. Burr, his attending physician, and Cyrus H. Benbau, who served with petitioner as sergeant of his company, that the disease with which petitioner is affected—syphilis, caused by vaccination for the kine-pox—originated in the service. We do not reproduce the testimony in this report filed with the petition and duly sworn to, but make it a part of and refer to the same in support of the petition and claim for a pension. It is sufficiently established that the disease is permanent, and of such character as to justify a pension. We therefore recommend the passage of the accompanying bill.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3699.]

The Committee on Pensions, to whom was referred the bill (H. R. 3699) granting a pension to Lydia Simpson, have had the same under consideration, and submit the following report:

Claimant is the mother of Nathan J. Simpson and George W. Simpson, who enlisted as privates in Captain Mitchell's company, D, One hundred and first Regiment New York Volunteers, on the 4th day of December, 1861.

Claimant alleges that Nathan J. Simpson, while in the line of duty, died at Savage station, Va., on or about the 15th of July, 1862, and that George W. Simpson was discharged from Carver Hospital, on or about the 8th of October, 1862, by reason of disability incurred while in the service, and came home, where he died, on or about the 10th of November, 1862, of chronic diarrhea and black jaundice, which were contracted while in the service. Claimant further states that her said sons, Nathan J. and George W., had, before their enlistment, become the owners of a small farm in Preston Township, Wayne County, Pa., containing about eighty acres of land, fifteen acres of which were cleared; that the said Nathan J. and George W. were the only sons of claimant; that they left neither wife nor children, never having been married; and that herself and husband depended largely for their maintenance and support upon them.

James Simpson, father of the said Nathan J., made application to the Pension Bureau, alleging dependence upon that son, which was rejected, because the mother of deceased was living. The mother then made application, which was still pending when the papers in the cases (the two applications having been consolidated) were withdrawn from the Office, with a view to relief by Congress.

The note of the Commissioner of Pensions, accompanying the papers, says the claim has not been rejected, but lacks proof of the cause of the soldier's death, of disease originating in the service, and of dependence and support.

The alleged dependence is stated to have been mainly upon Nathan J. Simpson, who was about twenty-five years old, while George W. was a youth under twenty. The death of the latter and the cause are sufficiently established, but there is no evidence found among the papers showing of what disease, or where Nathan J. died, or that he died at all. The evidence furnished the Commissioner of Pensions from the Adjutant-General's Office only shows that the soldier was sent to division

hospital at Savage station June 28, 1862, while the Surgeon-General reports November 28, 1871, as follows, indorsed on the back of the letter of inquiry of the Commissioner of Pensions: "The death-records of this Office furnish no information in this case, nor do the records of Savage station and Harrison's Landing, Va., or Medical Division of Washington." The adjutant-general of the State of New York certifies that the records of his office afford no information relative to the soldier beyond enrollment and muster into service in Company D, One hundred and first New York Volunteers. The letter of Second Auditor of January 8, 1872, shows that James Simpson, pending his application for pension, was allowed pay on account of the service of the said Nathan J., to include the 15th July, 1862, date of death, alleged by him. The said James Simpson acknowledges also to have collected the bounty, making in the aggregate \$132.50. But neither he nor the claimant allege that any money was contributed by either of the said sons while they were in the Army toward the support of the parents. They state in general terms that said sons had always lived with them, and worked on the farm; that they are now infirm, unable to work the farm, and are very poor. Sundry of their neighbors testify to the truth of these statements, but no one testifying to any specific contribution toward the support of claimant by her said sons during their service in the Army or before. Clearly the Commissioner of Pensions was right in calling for further proof, both as regards the death of the soldier and the cause, and also the alleged dependence.

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3682.]

The Committee on Pensions, to whom was referred the bill (H. R. 3682) granting a pension to Theron W. Hanks, have had the same under consideration, and report as follows:

Hanks was enrolled in the Third Battery Minnesota Volunteers, as bugler, on the 21st February, 1865, and was discharged by orders from the War Department February 27, 1866.

Claimant alleges that he was discharged on account of disability contracted in the service and line of duty, the disease being epileptic fits, which he is still subject to, and which totally disabled him for manual labor. He filed his application for pension on the 8th of February, 1868, alleging that on the 20th of June, 1865, at Fort Ridgley, Minnesota, while in the line of duty, he was attacked with what physicians call epilepsy; had three fits June 20, 1866; was taken to the hospital, and had several more; confined to hospital three days; was under treatment several weeks for said disease; was again attacked within one week after his discharge, and has had them frequently ever since.

The Surgeon-General's report shows that claimant was admitted to hospital, Fort Ridgley, Minnesota, June 21, 1865, with epilepsy; returned to duty June 25, 1865, and was re-admitted July 10, 1865, as Hanks, bugler, with fits, and returned to duty July 11, 1865.

The affidavit of Lieut. D. A. Dunnell, of the said battery, states that on the 21st of June, 1865, at Fort Ridgley, Minnesota, where the battery was then stationed, claimant had an epileptic fit in front of the officers' quarters, and was taken to hospital, where he remained under treatment until June 29; that at intervals after that time was subject to them until discharged; that his habits were good.

Affidavit of Dr. I. H. Sudduth states that he became acquainted with claimant in 1860; was the father's family physician, and continued such until claimant went into the Army; had abundant opportunity to become acquainted with claimant as to his health and condition, and positively knows that claimant, prior to enlistment, was a strong, hearty, robust man; worked on a farm, and was able to do a full day's work.

Dr. E. M. Morehouse testifies that he is well acquainted with the case and condition of claimant, and has been ever since his discharge, in 1866, claimant having been under deponent's charge for most of the time; that he has been subject to attacks of epilepsy, at intervals, ever since his discharge, often falling on the streets; has been incapacitated

for labor almost entirely on account of such attacks; that any exertion or excitement was sure to cause an attack, and confine him to his room for days and sometimes for weeks. Is entirely disabled for labor.

Examining Surgeon Blood, under date of July 7, 1874, reports claimant totally incapacitated for obtaining his subsistence by manual labor from the cause stated, (epilepsy,) and that in his belief the disability originated in the service. After giving a particular description of the soldier, the doctor adds that he is unable to give a history of the claimant, only as obtained from himself and family, who claim that he was first taken while in camp at Fort Ridgley, Minnesota, and that he has continued to have epileptic fits, at intervals of from two to four weeks, ever since, and that he is in continued danger of an attack.

So much of the testimony in the case seems to sustain the allegations of the claimant, while other portions of it are against the declarations made by him.

The Adjutant-General reports claimant enrolled February 21, 1865; mustered private February 21, 1865, Third Battery Minnesota Volunteers; mustered out February 27, 1866. No evidence of disability on file in his Office.

The captain of the battery to which claimant was attached states in a letter filed December, 1873, that he has no recollection of any facts pertaining to claimant's disability.

Dr. Alfred Muller, in a letter to Hon. M. H. Dunnell, dated Owatonna, Minn., 24th April, 1873, states that he was surgeon at Fort Ridgley, Minnesota, from June 10, 1861, to April 27, 1865, and from September 7, 1866, to February 7, 1868, and has no recollection of claimant having been under his treatment, nor has he any means to refresh his memory, as the records of the hospital have probably been removed to Fort Totten, Dakota, at the time of abandoning Fort Ridgley; that from the 27th of March, 1866, to September 7, 1866, Dr. McDonald was post-surgeon, but deponent learned that he died some years ago, South, as surgeon to a colored regiment. The doctor proceeds: "It is a question of importance for Hanks's case to ascertain if he was discharged the service on surgeon's certificate for disability, or by expiration of term of service. If discharged on surgeon's certificate for disability, his name and the circumstances are recorded (the certificate) with the Surgeon-General United States Army, at Washington, on which will be found stated if the disability existed prior to enlisting, or originated in the service."

Claimant states that he was only treated in hospital at Fort Ridgley, Minnesota, in June, 1865, and does not remember the name of the surgeon who treated him.

Finally, claimant's discharge recites that he is discharged by reason of telegram, dated Washington, D. C., October 17, 1865, and adds that "no objection to his being re-enlisted is known to exist." Claimant's time of service had not expired. He enlisted for three years, or during the war. He was mustered out, along with the great majority of the Army, at the close of the war.

The honorable Commissioner of Pensions, still finding no sufficient evidence that the alleged cause of claimant's disability originated in the service, because he had only just entered the service about four months before the first attack of epilepsy, and had seen no hard service, had been in no battle, or exposed to any severe strain, so far as any one can testify to, required further evidence on this point; whereupon claimant filed the medical opinion of Dr. John A. McDonald, dated 11th February, 1874, which is as follows:

It appears from the decision of your Office, dated February 2, 1874, regarding the claim of Private Hanks, late bugler Third Minnesota Battery, No. 130035, that said claim is rejected on the ground that the disability that unfitted said Hanks for further duty as a soldier is not proven to have been "contracted in the service and line of duty." Still believing that said difficulty (epilepsy) was induced by the cause set forth in the claim, I hereby certify and depose to the following:

1st. That, so far as I could learn, said Hanks had always enjoyed good health up to the period of his attack.

2d. That it is not hereditary, no relation of his ever having had such attacks.

3d. That I saw him at the time he had the first epileptic attack, and, from the appearance he then presented, I at once expressed my opinion that he must discontinue any further use of the bugle, as it was the sole cause that produced the attack.

4th. That said Hanks had been lately appointed bugler; passed much of his time in practicing on that instrument, in order to qualify himself for the position.

5th. That the excessive use of this wind-instrument forced the blood to the head, surcharged the capillaries with that fluid, and thus produced the condition which disabled him from afterward performing his duty.

6th. Standard medical authority will sustain me in saying that the habitual and almost continued use of such a wind-instrument as the bugle, and when the physical conformation of the performer is such that the blood has a tendency under any circumstances to the brain, is apt to produce several dangerous conditions, among which may be classed epilepsy.

7th. From these facts I unhesitatingly give it as my opinion that the said Hanks did, in the discharge of his duty as a soldier, bring upon himself this epileptic condition, and, therefore, he is legitimately entitled to the humane consideration of our Government.

The committee, upon a review of all the testimony in the case, recommend the passage of the bill.



IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3723.]

The Committee on Pensions, to whom was referred the bill (H. R. 3723) granting a pension to Mary Logsdon, have had the same under consideration, and submit the following report :

The testimony in the case shows the claimant to be the widow of Joseph Logsdon, late a private in Company K, Second Regiment Maryland Volunteers, who was killed on the Baltimore and Ohio Railroad, on which he was traveling home from the headquarters of the regiment, on New Creek, West Virginia, on furlough to visit his family, about the 15th December, 1863.

Claimant applied for pension in March, 1864, and her application was rejected August 22, 1865, on the ground that the soldier was not in the line of duty at the time he was killed. The honorable Commissioner states that it appears that he had permission from the captain of his company to visit his family, and was killed by being run over by the cars while off on a pass.

The captain of the company testifies that while the regiment was erecting and preparing its winter-quarters in the month of December, 1863, at New Creek, West Virginia, Colonel Bruce, commanding said regiment, was in the habit of granting short leaves of absence to those of his men who had families, to visit them, for the purpose of providing for their necessary wants the coming winter. Among those allowed this privilege, by the authority of deponent and Colonel Bruce, was Joseph Logsdon, a private of said Company K, who got upon the train of cars for that purpose, and was killed on the way home, somewhere near Cumberland, as deponent understood and believes. Deponent further states that said Logsdon was a faithful and obedient soldier.

The Adjutant-General United States Army states that on the muster-roll of Company K, Second Regiment of Potomac Home Brigade, Maryland Volunteers, for the months of November and December, 1863, claimant's husband is reported "killed by cars on Baltimore and Ohio Railroad, December 13, 1863."

There is no evidence in regard to the habits of the soldier, except the testimony of the captain as to obedience and faithfulness; nor is there any evidence showing how the accident happened or the condition of the soldier at the time. In the absence of any allegation of recklessness or intemperance, the statement of the captain may be taken as evidence of general good character and deportment. The committee regard a soldier on furlough to see his family to be in the line of duty.

The committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. ALLISON, from the Committee on Pensions, submitted the following

REPORT:

[To accompany bill S. 911.]

The Committee on Pensions, to whom was referred the petition of Sarah Flanagan, widow of James W. Flanagan, late first lieutenant in Company C, Fifty-sixth Regiment Illinois Infantry Volunteers, submit the following report:

There is no evidence showing that said James W. Flanagan died from the disease, incurred during the term of his military service, and the committee therefore ask that the Senate bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. JOHNSTON, from the Committee on Patents, submitted the following

REPORT:

The Committee on Patents, to whom was referred the following resolution of the Senate—

IN THE SENATE OF THE UNITED STATES,
January 18, 1875.

On motion by Mr. Alcorn,

Resolved, That the Committee on Patents be instructed to inquire whether the patent No. 31252, granted to J. J. McComb, of Liverpool, England, on the 29th of January, 1861, for "Improved Cotton-Bale Tie," has been extended by the Commissioner of Patents, and, if so, upon what notice, and whether any further legislation is necessary to provide for giving to those interested in opposing the extension of patent, sufficient notice of the application for such extension.

Attest:

GEO. C. GORHAM,
Secretary.

have had the same under consideration, and beg leave to submit the following report:

Patent No. 31252, for "Improved Cotton-Bale Tie," was granted on 29th January, 1861, to J. J. McComb, of Liverpool, England, for fourteen years; thus expiring on 29th January, 1875.

The sixty-third section of the patent-laws of 1870 requires an application for extension to be filed not more than six months nor less than ninety days before the expiration of the patent. The application for extension in this case was filed 28th October, 1874, more than ninety days before the expiration of the patent.

Section 64 of the patent-laws makes it the duty of the Commissioner to publish notice of an application for extension for at least sixty days prior to the hearing, in one newspaper in Washington, "and in such other papers published in the section of the country most interested adversely to the extension of the patent, as he may deem proper."

This provision has existed since the act of 1836, but it is clearly impossible for the Commissioner to comply with it literally. He don't know and can't know what "section of the country is most interested adversely to the extension" of most patents.

The practice has been to comply with this requirement, as far as possible, by publication in some paper in the vicinity of the residence of the applicant. But if he resides abroad, the notice has been published in some New York paper, upon the supposition that those papers have a

more general and larger circulation than papers published elsewhere. This practice was established many years ago, and has been kept up since the revision of the patent-laws in 1870.

The newspapers in which the advertising of the different Bureaus of the Interior Department shall be done are designated by the Secretary. (See 15 U. S. Stat. at L., ch. 176, sec. 4, p. 110.) But this law, and the practice under it, are directly in conflict with the 64th section of the patent-laws of 1870, referred to above. That the Secretary should designate the newspapers in which notices for extension must be published, and, at the same time, the Commissioner should have the right to select such papers as will, in his opinion, be best calculated to give notice in the section of the country most interested against the extension, are irreconcilable provisions.

The work of having the notices given in the newspapers is done by a clerk, who receives the applications for extensions, as it would be impossible for the Commissioner to attend to it in person.

The notice in this case was published in *The Republic*, of New York City, the *Chronicle*, of Washington City, (the latter at the expense of the applicant,) and in the *Patent-Office Gazette*.

It is clear that the article patented—"an iron tie for cotton-bales"—is used almost exclusively in the cotton-growing States, and your committee thinks the notice should have been, on that account, published in some Southern newspaper. And the Commissioner informed the committee that he would have given that order if the matter had been brought to his special notice. But the clerk in charge of the business followed the practice in vogue for years past.

The application of Mr. McComb came on for hearing January 13, 1875, without opposition. Argument was heard by the Commissioner on that day, and the testimony afterward examined. Upon the evidence submitted, which was wholly *ex parte*, the Commissioner thought the case meritorious, and, in pursuance of the provisions of the 66th section of the patent-laws of 1870, he ordered, on the 15th of January, 1875, the extension on the payment of the final fee before the expiration of the patent. A motion to re-open and reconsider the case could have been made, however, at any time before the 29th of January, 1875.

Your committee is of opinion that no general legislation is necessary, because the privilege of extension will cease the first of March next, and all applications that can be considered under the law have already been filed and advertised.

Your committee asks to be discharged from the further consideration of the resolution.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. SCOTT, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Mrs. Eliza E. Hebert, of Louisiana, praying compensation for property alleged to have been taken by the Army in 1863, having considered the same, submit the following report :

Mrs. Hebert presents her petition claiming the sum of \$47,975 for corn, wood, lumber, horses, mules, hogs, cows, beeves, poultry, and fencing on the plantation, used by the troops under command of Gen. Halbert E. Paine, and a company of cavalry commanded by Captain Perkins, which supplies she alleges were taken in 1863. The order under which they were taken, issued by General Payne, expressly requires the officers authorized to take property to give receipts for it, and requires the quartermaster and the commissary to whom it was turned over to take it up in their returns and account for it according to law. The evidence for which we would naturally look under this order would be the receipts which he directed to be given. There are no receipts, and it is stated that none were given by the officers who took the property. Inquiries addressed to the Quartermaster-General and the Commissary-General have elicited replies stating that neither of the officers named have charged themselves with any supplies received from Mrs. Hebert's plantation.

We are not informed whether these officers are yet living, or whether any effort has been made to secure their testimony. In the absence of their testimony, that which is submitted is not of the most satisfactory character. It consists principally of the statements of servants, some of whom were formerly slaves on the plantation, whose estimates of the quantity and value of the articles alleged to have been taken we are not inclined to receive with implicit confidence.

There is some other testimony, it is true, but not of that satisfactory character which would justify the committee in recommending the payment of the large claim here made. We are brought to this conclusion, moreover, because the articles claimed for are of the class for which claims should have been presented to the Commissioners of Claims, appointed under the act of March 3, 1871. Petitioner states that she was not aware, until last year, that such claims were being paid, and, therefore, she did not prepare her testimony and submit her case. We are thus brought to the question in this case whether the Committee on Claims, upon the simple allegation of petitioner of ignorance of the existence of that commission, will receive and consider claims which are now barred by the limitation of that act. Propositions are now pending in Congress to extend the time in which such claims may be filed, and

if it be deemed proper to extend the time, that will be the proper tribunal before which all claims of this character should be heard. We deem this case one which should be investigated by that tribunal, if it is decided to remove the bar of the statute. It would be peculiarly proper that the special agents furnished to those commissioners should make inquiry into the facts and circumstances alleged in this case, and the value of the stores taken, if there is to be an adjudication of the amount which should be paid for them.

It is proper to add to this report that inquiry made of the petitioner results in the information that her husband was living at the time the supplies claimed for were taken from the plantation. No evidence is given to show in whom the legal title to that plantation was vested, or to show whether he was or was not loyal to the Government. These would also be proper subjects of inquiry, either before the Commissioners of Claims or upon any subsequent application to Congress.

With these views of the case, the committee do not feel warranted in setting a precedent which would virtually invite the presentation to Congress of all the claims now barred from being heard by the Commissioners of Claims, and, without deciding against the merits of this petitioner's claim, we ask that for the present the committee be discharged from its further consideration.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. DORSEY submitted the following

REPORT:

[To accompany bill H. R. 4444.]

The Committee on the District of Columbia, in recommending the passage of the substitute to House bill No. 4026, herewith reported, submit the following report :

The object of the accompanying bill is to carry out the recommendations of the sinking-fund commissioners for the District of Columbia, appointed under the act of Congress approved June 20, 1874, and to secure the results aimed at by said act.

By the seventh section of said act the faith of the United States was intended to be pledged that the United States would, "by proper proportional appropriations as contemplated in this act, and by causing to be levied upon the property within said District such taxes as" would do so, "provide the revenues necessary to pay" the interest and principal at maturity.

At some stage of the bill, however, two important words were dropped out, which it is the object of this bill to restore. The sinking-fund commissioners in their report (Ex. Doc. 1, Part 6, H. R., p. 120) say :

It will be observed that the language of the act, as it finally passed, is rendered somewhat obscure by the omission of the words "do so," where they appear in brackets. The defect in the wording of the law, and the absence of such an express and explicit guarantee by Congress as would satisfy counsel to whom it was referred, have prevented the bonds from being taken as an investment by various financial institutions in the larger cities, and, being thus dependent upon the local market for support, has caused them to sell for a less price than was anticipated when the act was under consideration.

It appears from the report of the joint investigating committee, of June 20, 1874, (Congressional Record, p. 5328,) that these words, "do so," were in the bill recommended by them, but, for some unaccountable reason, were omitted from the act as engrossed.

The second provision suggested by the accompanying bill is, that registered bonds be authorized in lieu of coupon bonds, where desired. Upon this point the sinking-fund commissioners say :

It would much conduce to the convenience of the holders of these bonds that authority be given by Congress for the issue of registered in lieu of coupon bonds when desired, and that the interest on both classes be made payable through the officers of the Treasury of the United States.

The committee recommend this, as it is the unvarying custom of Congress to make such provision in all Government bonds; and as the United States, by guaranteeing these bonds, have entire control over them, and should retain it, your committee have thought it best to make them registered as well as coupon. It is a great convenience and protection to holders to possess a bond that may not be stolen or destroyed; and

2 PAYMENT OF INTEREST ON BONDS OF DISTRICT OF COLUMBIA.

for investment by trustees and others acting in a fiduciary capacity it is an important matter to be able to obtain registered bonds.

The commissioners for the District of Columbia, in their Annual Report to Congress, p. 10, call especial attention to the matter, as follows:

We venture to call the attention of Congress to the comprehensive and careful report of the commissioners of the sinking-fund, and especially to their suggestions relating to the ambiguity in the act of June 20, 1874, respecting the guarantee by the United States of the 3.65 bonds authorized to be issued in payment of certificates of indebtedness, issued by the board of audit, and to their recommendation that the interest on the 3.65 bonds be made payable in coin.

The commissioners again invite attention to the subject in a recent communication to the Speaker of the House of Representatives, January 11, 1875.

The sinking-fund commissioners report that up to December 1, 1874, there have been converted into these bonds claims to the amount of \$2,088,168.73, (Report of Commissioners, p. 122,) there being about 700 claimants, as stated by the commissioners to your committee.

The report of the board of audit shows that there have been issued certificates of audit amounting to \$6,858,727.18, which are convertible into 3.65 bonds. In addition to the foregoing the board of audit report claims outstanding, convertible into 3.65 bonds when audited, amounting to \$3,147,787.48, making a total, if all the claims filed are allowed, of \$10,006,514.66 to be ultimately converted; this will be varied somewhat by claims disallowed, and by claims for work being done, payable in these bonds, but the ultimate issue under the act of June 20, 1874, will not materially vary from the amount stated by the board of audit.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill H. R. 1799.]

The Committee on Pensions, to whom was referred the bill (H. R. 1799) granting a pension to Angelica Hammond, submit the following report:

Petitioner is widow of William Z. Hammond, late a private Company E, First Maryland Cavalry. The soldier died six months after his discharge. The Pension-Office rejected the application because the soldier was charged with desertion from December 1, 1862, to February 17, 1863. It is in evidence that he was honorably discharged February 17, 1863, for disability; disease, varicocoele. This is after his desertion and return to camp. His absence is accounted for by the statement of two citizens of Baltimore, who assert that he was sick all the time; was in the West United States Hospital at the time he was arrested for desertion. That they think he did not intend to desert, and would have returned to duty as soon as he had recovered his health. That the fact of his discharge by the surgeon after his alleged desertion is evidence his case was considered by his superior officers as not subject to the penalties imposed upon deserters. The committee therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill H. R. 3729.]

The Committee on Pensions, to whom was referred the petition of Anne Eliza Brown, widow of General Harvey Brown, late colonel and brevet major-general of the United States Army, submit the following report:

That upon the papers presented, the widow of General Harvey Brown would be entitled to a pension equal to the amount in the House bill, upon proof being made at the Pension-Office; it appearing from a letter on file with the papers that no application has been made for a pension under existing law.

Your committee think such application should be made before invoking congressional action. The committee, therefore, recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT :

[To accompany bill S. 1125.]

This bill directs the Secretary of the Treasury to pay to the Terre Haute and Indianapolis Railroad Company the sum of \$7,543.75, with interest from March 10, 1862, as the amount due the company for carrying the United States mail, as found and ascertained by the Court of Claims.

On the 28th May, 1862, the Court of Claims made a report to Congress in the case of the president and directors of the Terre Haute and Richmond Railroad Company *vs.* The United States, setting forth therein sundry documents, the evidence taken in the case, and the opinion of the court. (See report C. C. No. 293, 37th Congress, 2d session.)

The case as made by the petition of the company is as follows:

The company had, previous to May 1, 1852, constructed a railroad between Indianapolis and Terre Haute, in the State of Indiana.

On that day the United States mail was placed on the road to be transported between these points, by virtue of a contract with the Postmaster-General, whereby the company were bound to transport certain mail-matter for two years from the date of the contract, at a compensation of \$100 per mile for six trips each week, which mail-matter was limited in quantity by the express understanding of the parties; that at that time all mail-matter for the city of Saint Louis and beyond, from Cincinnati and east of that city, was forwarded by the Ohio River route, and that the amount of mail to be sent over the road of the company would not, probably, much exceed the amount at that time carried by the Madison and Indianapolis Railroad in that State.

The road of the claimants, between Indianapolis and Terre Haute, is seventy-three miles in length.

After the expiration of the contract the company continued to carry the mail for two years without any additional agreement as to the rate of compensation until the completion of the railroad from Terre Haute, by the way of Vincennes, to the city of Saint Louis, at which time (1st July, 1855) the mail-matter upon the company's road was greatly increased by there being placed upon the same a much larger and heavier mail than had before that time been transported by the company, which consisted of the great western and southern mail. This was done by the special agent of the Post-Office Department, and, as is alleged, pursuant to an understanding between him and the company that they should be paid for the increased mail-matter what the same was reasonably worth.

This increased mail-matter was transported between Terre Haute and Indianapolis, twelve trips each week from July, 1855, to March 31, 1856,

a period of nine months, and is alleged to have been worth during that time \$200 per mile per annum, amounting, for seventy-three miles, to \$10,950.

The company also transported upon their road from October 1, 1854, to November 16, 1854, a period of a month and a half, to the town of Greencastle, situate thirty-nine miles west from Indianapolis, on the line of the road, the mail-matter destined from Indianapolis to Lafayette, and from Lafayette to Indianapolis—another company, the Lafayette and Indianapolis Railroad Company, having refused to transport the same. The claimants say this service was worth \$50 per mile per annum, and they charge for this service \$243.75.

The company also transported the way-mail from Indianapolis to Terre Haute, and from Terre Haute to Indianapolis, from January 1, 1856, to March 31, 1856, a period of three months; and they charge for this service, at the rate of \$100 per mile per annum on seventy-three miles or road, the sum of \$1,825, making the total claim \$13,018.75.

This is an abstract of the claim made.

The court held (Judge Loring dissenting) that the claimants were entitled—

For additional compensation from 1st July, 1855, to 31st December, 1855, at \$100 per annum	\$3, 650 00
For compensation from 31st December, 1855, to 31st March, 1856, at \$200 per mile per annum	3, 650 00
For services from Indianapolis to Greencastle, from 1st October, 1854, till November, 1854, at \$50 per mile per annum	243 75
	<hr/> 7, 543 75

The court held that a bill should be reported to Congress for this sum, which is the amount given by the present bill to the company, with interest added.

The court treated the written contract as still subsisting even after 1st July, 1854, and governing the rights and remedies of the parties, the company having continued to carry the mail, as before, after that date, and to receive therefor the same quarterly compensation. They likened it to a contract of lease for a given time, where the tenant holds over beyond the stipulated time without formal renewal of the lease, the mutual stipulations of the parties in the written contract being construed to continue over the extended period of occupancy. The written contract was for transporting the mail on route 3905, from "Indianapolis, by Bridgeport, &c., to Terre Haute and back, daily, except Sunday, by railroad cars, with an additional mail on Sunday, if required, without additional pay, whenever the company may run a train of cars on that day, at \$7,300 per annum, for and during the term commencing the first day of July, 1852."

The contract contained this clause, which was commented on by the court:

"It is hereby stipulated and agreed by the said contractors and their sureties that the Postmaster-General may increase the service, or change the schedule, he allowing a *pro-rata* increase of compensation, within the restrictions imposed by law for the additional service required."

The court found from the evidence that the nature and character of the mail-service on this road continued of the same amount and description until about the 1st July, 1855, at which time, by the completion of connecting lines of railway, it became a link in the main line of communication between Saint Louis and the East, and about that time the great through-mail to and from the East for that point was trans-

ferred from the Ohio River route to this road and its connections, and instead of being carried once daily each way, as before, it was increased to two, and part of the time to three, daily mails each way. The court then proceeded to say :

If, then, the contract of the 18th of September, 1852, remained in force between the parties, how did it affect their rights and relations on the increase of the service ? In our judgment this is the very contingency contemplated in the clause of the contract cited above, providing for a *pro-rata* increase of compensation in the event of the increase of the service. The value of the mail-service is regulated by its amount, its frequency, and the speed with which it is conveyed. In this case, the bulk and weight was more than doubled, the number of mails was duplicated, and the labor, risk, and responsibility of the contractors augmented in the same proportion. On every principle, therefore, by which the value of such services is estimated, it appears to us but just and right that these contractors should be paid for this increased service, rendered by them under the requirement of the Post-Office Department, and the Post-Office Department itself appears to have acted on the same principle, by making an allowance to the Evansville and Crawfordsville Railroad Company, one of the connecting lines of the claimants, at the rate of \$75 per mile per annum for this increased service.

The act of March 3, 1845, required the Postmaster-General to arrange and divide the railroad-routes over which, in whole or in part, the mails were carried, into three classes, according to the size of the mails, the speed with which they were conveyed, and the importance of the service. And the maximum rates, to be allowed for the conveyance of one or more daily mails, upon the first class could not exceed \$300 per mile per annum ; on the second class, \$100 ; on the third class, \$50. In the contract made, the road in question being of the second class at the time, it was objected on the hearing that a higher rate of compensation than \$100 per mile could not be made under the prohibition of the law. But to this objection it was answered by the court that the matter of classification was, by the very terms of the law, to be regulated according to the size of the mails, the speed with which they were conveyed, and the importance of the service ; that the law fixed no limit the classification should endure, for the obvious reason that, in view of the constant and rapid changes that were occurring, it would be impossible to do so without causing embarrassment to the Department and injustice to the companies. The court say upon this point :

We cannot suppose Congress intended that a route properly rated as first class, and paid for as such, should continue in that class when it had in fact ceased to be so by the completion of a shorter, better, and more expeditious route ; and especially when its service had been transferred to and was being performed by its younger but more fortunate competitor ; or that the latter, despite the change of circumstances and of service, should still be kept in the third class and paid accordingly.

After saying that the whole duty and power of classification was confided to the Postmaster-General, the court add on this point :

All difficulty on this score could, therefore, have been readily obviated by transferring this route to the first class, to which it had clearly advanced by the character and amount of service it was performing. The terms of the act interpose no obstacle to this course, as it does not prescribe the time when nor the period for which the classification should be made. It was intended that the Department should control the classification and not the classification the Department.

The committee have quoted freely from the opinion of the court, as it seems to embody just views of the law and of the construction to be given to the contract. The evidence clearly shows that after the 1st of July, 1855, the service performed by this company justly entitled their road to be rated in the first class, since they became the carriers of the great mail from Cincinnati and points east of that to Saint Louis and points beyond, the same through-mail which, at the time of the contract

4 TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY.

on 28th September, 1852, was transported by way of the Ohio and Mississippi Rivers to Saint Louis.

This opinion of the court, rendered in 1862, never having received the action of Congress, and the amount due the company having been then ascertained, the committee report the bill back to the Senate with an amendment, and, as amended, recommend its passage. That amendment consists in striking out the part allowing interest.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill S. 340.]

The Committee on Pensions, to whom was referred the petition of George Baxter, only heir and minor child of Robert Baxter, late second lieutenant in the Ninth Regiment of Minnesota Volunteers, make the following report :

The committee recommend the indefinite postponement of this bill for the reason that George Baxter is now over sixteen years of age.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill S. 1216.]

The Committee on Claims, to whom was referred the claim of Claude H. Masten, surviving partner of the firm of Le Vert & Masten, of Mobile, Ala., for himself, and in behalf of Octavia Le Vert and her two children, widow and heirs of his deceased partner, submit the following report:

The claim is made up of rent of hospital for six months, from the 15th of April to the 15th of October, 1865, \$1,500; damages to the same by United States troops, \$510; cash paid for survey, \$25; six beds, mattresses, &c., \$50; making \$2,085.

The claimant asserts that occupation was taken of this hospital by Union forces in the spring of 1865, for the use of sick and wounded officers, Doctor Abidie, chief medical officer of General Canby's command, thinking it desirable to secure the use of it for such purposes.

He alleges that he had the voluntary assurance of the doctor that a liberal rent would be paid and the property restored in good repair. He alleges that, with the expectation that it would then be turned over to the firm on July 1st of that year, an account was made up to that date, including the estimated cost of repairs, which was made by a board of survey, and that this was done on the suggestion of the commanding officer, General Kilby Smith. That, instead of being thus turned over, it was taken possession of by the Quartermaster-General's Department, and not finally released to him until about the middle of October.

In support of his claim the evidence, without recapitulating it, establishes the following facts:

The building was used as a medical hospital from the time possession was taken in April to some time in June, 1865, about two months. After that it appears to have passed into the control of the Quartermaster's Department, such control continuing until about the middle of October of the same year.

The claim for rent from the 15th of April to the 28th of June, amounting to the sum of \$500, for damages done to the building and for furniture removed, and expenses in estimating damages, amounting to \$585, was presented to the proper department, and payment thereof recommended by Colonel Wickersham, chief quartermaster of the Department of Alabama, his indorsement upon the papers reciting as follows:

"I am satisfied that the claimant is justly entitled to a fair compensation for the use, by the Government, of the Le Vert hospital, of Mobile, and also that the rate of rent, &c., claimed, is reasonable and just."

Captain McIntosh, in referring the claim to Colonel Wickersham,

strongly recommended that the claim be allowed. General Canby, of the date of November 14, 1866, says "that this property was excepted from seizure and occupation, on the capture of Mobile, on account of reputed loyalty and kindness to Union prisoners of one of the owners, Mrs. Le Vert, but was subsequently rented by the medical director of my command as a hospital for sick and wounded officers. It was expressly excepted from capture and protected by General Order No. 20, from the headquarters of the Army Division of West Mississippi. I recommend that the sum charged as rent be allowed and paid. The sum charged as damages cannot be allowed in that shape, but it is recommended that the Quartermaster's Department be directed to restore the property to the condition in which it was found when taken; two-thirds of the expenses to be borne by the Government, and the other third by claimants, or that a proportional allowance be paid in lieu of this. The charge made by the board of survey being in the interest of the claimants, should be borne by them."

These papers being laid before the Quartermaster-General, he held that "Mobile having been a hostile city captured by our troops from an enemy who did not surrender on terms, but was driven out by force of arms, everything in it was prize of war, as at Atlanta, &c. It does not appear that the military department should order payment of any sum under such circumstances."

On the 20th of November, 1866, the claim, as above recommended by the officers, was, by the order of the Secretary of War, referred to the claims commission.

On the 16th of March, 1867, this commission decided that it appeared from the papers and evidence that this claim comes within the prohibitory clauses of the act of Congress approved July 4, 1864, as amended and construed by the act of the Thirty-ninth Congress, entitled "An act to declare the sense of an act entitled 'An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermasters' stores and subsistence furnished to the Army of the United States,'" received by the President on the 9th day of February, 1867, and it was therefore rejected.

As to the value of the use of the premises, it may be conceded that the fair rental, after possession was taken by the Quartermaster's Department, was that fixed by Colonel Wickersham in his indorsement, before set forth.

In addition to the evidence of loyalty above set forth, we find the following. (Here we quote from the statement of one witness, which presents the facts substantially as they are detailed by others.)

Mr. C. F. Moulton, at one time city judge, and now mayor of Mobile, says: "I was well acquainted with Doctor Le Vert. I knew him about fifteen years prior to his death. He died during the late war, after a most protracted illness. During his illness I was frequently with him. In sentiment he was a thorough Union man; and with regard to Madam Le Vert, I can say, with the utmost truthfulness, that no lady in America surpassed her in her real love for the Union of these States; and for this devotion, none but herself and her God can know the suffering she has endured. On the 12th day of April, 1865, as General Granger entered the city of Mobile at the head of the United States forces, her house was opened for his reception. For several days the chief officers of the Army remained at her house, it being the only instance of hospitality being offered to Union Army officers then in this city. Soon thereafter, when the late Chief-Justice Chase and daughter visited Mobile, they were hospitably entertained by Madam Le Vert and

daughter. For her Union sentiments and hospitality to Federal officers, especially to Judge Chase, she and daughter have been virtually driven from their home, and suffered the torments of social ostracism and rebel persecutions, which must be experienced to be known.

"Slander and persecution, because of her faithfulness to the cause of the Union, has done its work. She is driven from the home she once loved, and from a society she once adorned. For the past eight years I have had the management of her property here, but owing to the causes stated it is impossible to derive a just compensation for its use. She is now in need, and the payment of her just claim against the Government—just within my own knowledge—would go far to relieve her present condition of want.

"I have known Doctor Masten for twenty years. He is a gentleman of fine culture, unobtrusive, and devoting all his time and thought to a profession that he honors. Doctor Masten deplored the late war. Before, during, and since that memorable struggle, he has not, within my knowledge, done any act inconsistent with a Union sentiment. To my personal knowledge he has not, within the past twenty years, taken any other part in politics than to vote, and then for the best men irrespective of party. He is a just man, and a good citizen. And I cheerfully state that if all men of his intelligence, in the Southern States, for the past eight years, had followed his example, peace and prosperity would here exist. Murder and political persecution would not depress and curse this part of our country as it does to-day."

And now we are to determine, upon this showing, what measure of relief, if any, should be granted.

First. The loyalty of Mrs. Le Vert is sufficiently established; (the husband died before the property was occupied.) As to the other party in interest, C. H. Masten, we are not so well satisfied. There is no evidence of affirmative or active loyalty. That he is an excellent gentleman, devoted to his profession, quiet, and taking but little part in politics or the affairs of the Government, is very clearly shown. Your committee, however, think that under the rules established and recognized in all cases heretofore coming to their cognizance, the claimant must show he was more than a mere indifferent spectator of the unhappy struggle. Loyalty to the Government demands more than a mere passive condition of mind, the mere willingness to let the conflict continue, readiness to accept union or disunion as alike agreeable or desirable. If Doctor Masten shows the affirmative loyalty demanded, then the same would be true of hundreds and thousands, who, whether from interest, indifference, engagements, or otherwise, gave no expression to their sentiments, or by their acts were ready to let the Union go or be preserved, as the fortunes of war might determine. Until the Senate shall change by its action the rules upon which we have thus far acted, therefore, we feel constrained to find the evidence insufficient to establish his loyalty.

Second. What shall be allowed, if anything, and to whom?

The case is a peculiar one. In view of the fact that this claim is made in behalf of Mrs. Le Vert and her two children, as well as in behalf of Doctor Masten, and as Mrs. Le Vert has pressed this claim, and is now pressing it for herself and children, in person, we have deemed it practicable and our duty to allow to her, for herself, and in trust for her children, such sum as under all the circumstances should be allowed. This of course can be only one-half of the amount for which the Government would be liable. What is this?

First. As to the cost of survey.

This was made upon the application of the claimants for their benefit

or their interest, and the Government is no more liable for it than for any other expense incurred in establishing a claim. Then, too, its reasonableness is in no way established.

¶ Second. As to the rent. That seems to be well established, and for one-half of it there should be an allowance of \$750.

Third. As to injury to the property. It would seem to be fair and equitable to follow the rule, in measuring this injury, presented in General Canby's letter of November 14, 1866, the Government being liable for two-thirds of the damages. This would be \$373.34, and one-half of this, \$186.67, should be allowed Mrs. Le Vert.

This makes the whole amount to be allowed her, \$936.67. For this sum we report the accompanying bill, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 1, 1875.—Ordered to be printed.

Mr. SCOTT submitted the following

R E P O R T :

[To accompany bill S. 495.]

The Committee on Claims, to whom was referred the bill (S. 495) for the relief of Ann L. Bland, having considered the same, submit the following report :

That the late John B. Bland was always, during his lifetime, a true and faithful citizen of the United States; resided in the State of Kentucky, and owned a block of buildings in the city of Louisville, in that State, situate on the corner of Fourth and Water or Wall streets; that on the 15th day of February, A. D. 1862, by his agent, he leased to the United States that part of said block of buildings commonly called "Bland's Hotel;" the building being 84 feet long and 22 feet wide and four stories high; and also the third and fourth stories over a block of stores 54 wide and 74 long; that said buildings were so leased to be used as barracks or quarters for convalescent soldiers. Lient. J. M. Hodge, assistant quartermaster, United States Army, was the agent of the United States in procuring said lease, and signed the same on the part of the Government. The rental agreed to be paid was seventy-five dollars per month, and the lease was for one month or longer, if required. The United States agreed "to take good care of the premises and return the same, at the expiration of said time, in as good order as received, ordinary wear and tear and natural decay excepted, unless destroyed by lightning or other natural cause, or fire, not caused by their default."

The said buildings were, while in possession of the United States, under and by virtue of said lease, destroyed by fire.

A board of survey was ordered by Major Flint, of the Army, and the board say :

LOUISVILLE BARRACKS, April 23, 1862.

Board met pursuant to the above order; members all present; proceeded to building corner Fourth and Water streets, lately occupied as barracks for convalescent soldiers. Found the building to be entirely destroyed by the fire, which took place on the morning of the 20th of April, 1862, the brick walls only standing. We found on close examination that the fire first broke out at a window at the end of a hall in the third story of the building, there being no fire or place for fire in the hall, and no fire in that part of the building. We believe it to be the work of an incendiary, not known to us, and no means of finding out who the person or persons were, or for what cause it was done. The guards were all at their posts, and doing their duty.

It appears that straw, a considerable quantity, was stored in the third story of the said house to be used by the soldiers; and testimony is given, which, it is claimed, warrants the inference that the house was set

on fire by soldiers dissatisfied with their quarters, or else that they negligently let the straw take fire. After the fire had been discovered, and before it had made much progress, several soldiers present made no effort to stop it, and crowded the stairway, so that one seeking to cast water on the fire could not do so.

Mr. Bland had said property insured for \$10,000, but the insurance company refused to pay for the loss because the buildings were destroyed through the carelessness of the soldiers, or was set on fire by them. They paid of the loss \$2,250, and did this as matter of favor to Mr. Bland, not because they were bound to do so.

The said John B. Bland died before the 26th day of October, 1868, leaving a last will and testament; and on that day Mrs. Ann L. Bland, his widow, and the executrix in his said will nominated, duly qualified before the proper probate court; she now claims in place of her late husband and as executrix.

Your committee are not satisfied that the claimant should be paid for the loss of this property so long as she has failed to pursue her remedy against the insurance company. The partial payment upon that policy alleged to have been made out of friendship to the insured, instead of upon the liability, rather leads your committee to the conclusion that it partook more of the nature of a compromise of the claim than a benefaction, and in the absence of such testimony as would satisfy the committee beyond all question that there was no legal remedy upon this policy, they think it is not a proper case for payment, and therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1875.—Ordered to be printed.

Mr. SPENCER, from the Committee on Military Affairs, submitted the following

REPORT:.

The Committee on Military Affairs, to whom was referred the petition of John Fisk, beg leave to make the following report:

The petitioner represents that he was the original inventor of a double-end propeller or ram for harbor defense, the principles of which were taken from him by others, and successfully used on the Mississippi River during the late war by General Ellett, and asks to "be granted the same rights and benefits in reference thereto as the man who claimed to be the inventor of the Monitor." Without passing upon the facts, no outside proof being adduced to support the statements of petitioner, and inasmuch as relief sought to be obtained is ambiguous and obscure and not stated sufficiently clear to warrant action of the committee, the committee ask to be discharged from the further consideration of said petition.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY , 1875.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill H. R. 3362.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 3362) for the relief of Sarah B. Forest, widow of Lieut. Dulaney A. Forest, late of the United States Navy, offer the following report :

1st. We find that some time in June, 1860, Lieut. Dulaney A. Forest, before sailing for the East Indies on the United States steamer Dakota, in the United States service, made an allotment of \$100 per month in favor of his wife, Sarah B. Forest, to be deducted from his pay as lieutenant in the Navy, and to be paid to her at the United States navy agency, at Norfolk, Va.

We find that under said allotment, while Lieutenant Forest was absent on board the United States steamer Dakota, in the service of the United States, there was deducted from his pay the sum of \$1,500 for the benefit of his wife, Sarah B. Forest, in accordance with the terms of the allotment, but that, owing to the resignation of the navy agent at Norfolk, Va., April 22, 1861, the going out of the State of Virginia, and other causes, only \$600 of this amount has ever been paid to Mrs. Sarah B. Forest, leaving a balance due in her favor and unpaid of \$820.

2d. We therefore recommend the passage of the bill for her relief, in accordance with the foregoing fact, for the sum of \$820. All of which is respectfully submitted.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1875.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill H. R. 1063.]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 1063) to restore Capt. John C. Beaumont, of the United States Navy, to his original position on the Navy register, have had the same under consideration, and submit the following report:

Captain Beaumont entered the Navy in 1838, and served creditably in subordinate capacities until 1862, when he commanded the Aroostook, under the orders of Capt. John Rodgers, at the attack on Fort Darling and at Malvern Hill. He received then and afterward the commendation of the officers over him for the gallantry displayed on this occasion. He also served in the Atlantic fleet under Admirals Du Pont and Dahlgren, and participated in the attacks on Fort Fisher and Wilmington as commander of the Mackinaw, under Admiral Porter, and has the highest recommendations of all the commanding officers under whom he served throughout the civil war. In April, 1866, he was designated for special service by the Department, which is evidence of his presumed skill and character at that time, taking command of the iron-clad Miantonomoh on her trip to Russia.

Shortly after his return to this country, Beaumont (then a commander) was examined for promotion, and not recommended by the board, which resulted in placing him on the retired list. The action of the examining-board in this case was considered *unjust* by the Department, and a law was finally passed restoring him, *not to his original position*, but to the foot of captains on the active list.

Such, in brief, is the history of the services of this officer, and of the action of the examining-board, and your committee believe that he is without reproach. It was an act of justice that one who had done so much to adorn his profession should be placed on the active list, and that the service should receive the benefit of his well-known ability and experience as an officer. It is worthy of remark that one of the three officers who reflected on Beaumont at the time of his retirement has, without solicitation, withdrawn his former opinion, as set forth in the following letter:

To Senate Naval Committee:

GENTLEMEN: The circumstances upon which I founded an opinion on Capt. J. C. Beaumont, United States Navy, some eight or nine years ago, appear to be entirely

removed. I think he should be restored to his old place on the register, (next above Captain Caldwell.) His present position is most humiliating to him, and does injustice to his standing and services.

Very respectfully,

A. MURRAY,

Commodore, United States Navy.

WASHINGTON, D. C., June 11, 1874.

The following is a copy of the report made by the chief of the Bureau of Navigation upon the case of Commander Beaumont, referred to said Bureau for examination, and indorsement of the Secretary of the Navy :

To the honorable Secretary of the Navy :

The letter of Commander Beaumont, referred to this Bureau, is herewith returned with the following information and remarks :

Commander Beaumont was retired April 25, 1868, by a board convened in Philadelphia under the first section of an act of Congress approved April 21, 1864. A synopsis of the testimony of every witness is given, and fully in all cases which reflect in any degree on the character and usefulness to the service of Commander Beaumont. It extends in time from his entry into the service, in 1838, until the date of the evidence.

Admiral Porter, Rear-Admiral Lanman, Rear-Admiral Lee, Rear-Admiral M. Smith, and Rear-Admiral John Rodgers testify satisfactorily, and even complimentarily, for Commander Beaumont and his active services under their command before the enemy. The last states that in the attack upon Fort Darling, Beaumont, in command of the *Aroostook*, performed his duty efficiently and gallantly.

Rear-Admirals Paulding and Engle, Commodores Berrien and Almy, Captains Macomb and Fairfax, Commanders H. A. Adams and T. C. Harris, have either served with or sailed with Captain Beaumont, and express themselves unequivocally and generally in a highly complimentary manner as to Beaumont's character and fitness for promotion.

Capt. John De Camp expresses a favorable opinion on all the points known to him.

Capt. Alexander Murray commanded the *Augusta*, and accompanied the *Miantonomoh* to Europe, the latter vessel commanded by Commander Beaumont. He states that he has known Commander Beaumont for twenty years, more or less, and that on board the *Independence*, as master, Commander Beaumont performed his duty efficiently ; also on board the United States monitor *Miantonomoh*, on special service in Europe, in 1866-'67, his duty was performed efficiently.

To question No. 3 he answers that "Commander Beaumont is not a man of temperate habits, but I could not say his habits disqualify him from promotion." He regards Commander Beaumont as mentally qualified for promotion ; also, that he regards him professionally qualified, "having great professional aptitude," and that Beaumont's general reputation is that of "a good fellow, but fast." He would not send him on important separate service, if he could avoid it ; and to the question whether he considers Commander Beaumont mentally, morally, and professionally qualified for promotion, he says : "With reformation, yes ; without reformation, no."

Lieut. Commander J. M. Pritchett, the executive officer of the *Augusta*, knew Commander Beaumont since the spring of 1865. So far as he was able to judge, thinks Commander Beaumont performed his duty efficiently in command of the *Miantonomoh*. He knew of no habits which rendered Commander Beaumont unqualified for promotion, nor did he think him mentally unqualified for promotion. He always heard Commander Beaumont spoken of as a good officer and a gentleman, but rather eccentric. He thinks Commander Beaumont in all respects qualified for promotion, provided he would overcome his eccentricity of character.

Surgeon W. C. Taylor made the cruise of the *Miantonomoh*. He is not aware that Commander Beaumont has habits which render him unqualified for promotion, nor has he any reason to believe him given to habits of intemperance. He regards Commander Beaumont as mentally qualified for promotion, and that his general reputation in the Navy is good, and does "not remember hearing anything against his qualifications as an officer or his reputation as a gentleman."

Assistant Surgeon Charles L. Green made the cruise of the *Miantonomoh*, and does not know of any habits of Commander Beaumont which render him unqualified for promotion. He considers him eminently qualified mentally for promotion, and does not consider himself qualified to judge of his general naval reputation.

Assistant Surgeon Schofield served on board the *Augusta* during the time Commander Beaumont commanded the *Miantonomoh*, and states that at times Beaumont was intemperate. He "had little opportunity to judge whether Beaumont's general intelligence and capacity qualify him mentally for promotion," and thinks he has the general reputation of an officer and gentleman of erratic genius.

Paymaster Past, of the *Augusta*, during the whole of the cruise of the *Miantonomoh*, commanded by Commander Beaumont, testifies favorably to him on every point.

Lient. Commander Graham, navigating-officer of the *Augusta*, testifies favorably to Commander Beaumont on every point.

Rear-Admiral Goldsborough has known Commander Beaumont twenty years or more. "He sailed with me in 1846-47, on board the *Ohio*, and then performed his duty in a very efficient manner. He served in command of one of the vessels of the North Atlantic blockading squadron for a little time, and performed his duty efficiently; he also served in command of the *Miantonomoh*, attached for a time in 1866-67 to the European squadron while I commanded it. When she first joined the European squadron I was not at all pleased with her condition, particularly as to cleanliness, and so expressed myself to him. Subsequently, however, a marked improvement took place." He had but very little personal association with Commander Beaumont since 1847, and therefore cannot state of his own knowledge that he knows of Commander Beaumont having habits which render him unqualified for promotion. He never saw Commander Beaumont intoxicated, and, therefore, has no reason, founded on his own observation, to believe him given to habits of intemperance. He feels bound to say that he does consider Commander Beaumont mentally qualified for promotion, and from his impressions of his professional attainments, "I do consider that they qualify him for promotion." He is not sufficiently informed to know the general naval reputation of Commander Beaumont. In reply to No. 7, he says, "My confidence would depend somewhat upon circumstances. If the service was particularly important, I do not think he would be my selection to perform it."

In reply to question 8, whether he considers Commander Beaumont mentally, morally, and professionally qualified for promotion, the admiral says: "I have neither seen nor heard anything about Commander Beaumont since nearly a year ago. Then I regarded his mental and professional qualifications as I have stated above; and, therefore, in these particulars, answer this question affirmatively. As to his moral attributes, I never witnessed any delinquency, nor have I been so associated with him since 1846-47 as to enable me to discover, by my own observation, what they really are, for, since that time, our intercourse has been comparatively little and mostly at long intervals. Then they were, I believe, unexceptionable."

Lient. Commander M. S. Stuyvesant served on board the *Miantonomoh* the whole cruise referred to, and testifies on every point favorably to Commander Beaumont. This officer has resigned since. He was of unexceptionable habits and character.

Two documents were appended from the Department, one stating the services of Commander Beaumont in aiding to extinguish a fire on board the United States frigate *Raritan*, and the other a letter from Commodore Berrien to Beaumont, complimenting him upon his services in 1860 at Loo-Choo, China, when sent in charge of a party for the protection of life and property.

A synopsis of the case in full is presented. I confess my surprise when an officer who served so long and so efficiently, and before the enemy with so much gallantry, could have been set aside on this testimony.

I recommend either a close examination of the case on its merits by yourself, or that you present it, with all the evidence, for the fair consideration of the Naval Committee, with a view to Commander Beaumont's restoration to the active list.

Respectfully submitted for your favorable consideration.

DANL. AMMEN,
Captain.

JANUARY 16, 1872.

I think Captain Beaumont should be restored.

The best officers in the Navy testify in his favor. He never had, and has not now, the reputation of a drinking man. I should think his reputation on that subject quite as good as those who testify on that point against him. If he applies to Congress, the Department will recommend him.



GEO. M. ROBESON,
Secretary of the Navy.

NAVY DEPARTMENT,
January 29, 1875.

A true copy of the report and indorsement of the Secretary thereon.

WM. P. MORAN,
Clerk.

If the examining-board was in error, (and, after giving the case a very careful examination, your committee can but arrive at that conclusion,) then the former act for his relief was not adequate to the injury he sustained, for he should have been re-instated in his *original* position. The

wrongs perpetrated by the examiners, or the mistakes of his fellow-officers, should not militate against him.

We have no doubt of the character or high professional merit of Captain Beaumont, and think he should have the same rank he would have held had he not been passed over by the board on testimony which, to your committee, seems insufficient in itself, and which has since been substantially withdrawn.

Being fully impressed with the justice of the claims of Captain Beaumont for the legislation he solicits, and that the best interests of the service will be subserved thereby, the committee report the bill without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1875.—Ordered to be printed.

Mr. CRAGIN submitted the following

REPORT:

[To accompany bill S. 928.]

The Committee on Naval Affairs, to whom was referred the bill (S. 928) for the relief of David Huestis, have had the same under consideration, and submit the following report:

The bill authorizes the Secretary of the Navy to investigate the claim of David Huestis for the use of his patent by the United States, for casting shot and shell, since the first of April, 1861, and to award such sum as he may find equitably due.

In 1854 Huestis invented a method of casting shells and solid shot by which a great number could be produced in the same time and by the same labor, being an improvement over all inventions known for this purpose, and in May, 1860, letters-patent were issued covering the invention.

Afterward, in the same year, as shown by papers before us, Huestis was appointed "master-founder" at the Brooklyn navy-yard, and while in that position at the breaking out of the rebellion, believing his invention to be a valuable one for his Government, he wrote to the Navy Department as follows:

NAVY-YARD, NEW YORK,
April 16, 1861.

SIR: Having received from the Government of the United States, during the past year, a patent for the manufacture of shot and shell in a much more rapid manner and more perfect than that now in use, I would, in view of the exigencies of the times, respectfully call your attention to it, and would place my right at your disposal for the term of one year.

I do this in order that any improvement may become immediately available to the Government, being assured, from a practical experience in this especial branch for many years, that the number made by one man in a day can be increased, at least threefold. My invention has already been examined and reported upon by a board of Navy officers, which report may be found at the Ordnance Bureau, at Washington.

I am, sir, with great respect, your obedient servant,

D. HUESTIS.

Hon. GIDEON WELLES,
Secretary of the Navy.

In response to this communication, and about two weeks after its date, a board of three officers went to the Brooklyn yard and made an official examination of this new method of casting shot and shell, and found it to be of great advantage to the Government, and recommended its adoption. (See Hitchcock's report.) Soon after this, Huestis was notified to put his patent into operation, and in June, 1861, an order was given to the commandant of the yard to grant him every facility for casting shot and shell, thus adopting the invention and accepting

the offer of the patentee. Its use was not confined to the Brooklyn yard, but was general wherever the castings for shells were made, and it is still used by the Government. The following extract from a letter written by the master-founder of the Norfolk yard, in July, 1865, shows some of the advantages of this patent to the Government.

FOUNDERS' DEPARTMENT,
UNITED STATES NAVY-YARD,
Norfolk, Va., July 7, 1865.

SIR: I received your last in due season. I reply to the same at the earliest possible moment.

It affords me pleasure to state the following facts in connection with your patent apparatus for the molding and casting of shot and shells, having had considerable experience in the *modus operandi* of the old plan, and likewise your own.

Your patent box is superior to all others, for the following reasons: In the manner they are constructed, there cannot be the least shift to the flask; it would be almost impossible to make a casting in them that would not be perfectly circular in form. In labor of molding and casting, I can safely say, there is a saving of 50 per centum in favor of the plan known as "Huestis's plan."

A man can make double the number of shot and shells on the "Huestis plan" that he can upon the old plan.

By setting the *core* with the gauge, out of (1,000) one thousand shells that be cast and finished, it would be impossible to find one that would vary $\frac{1}{16}$ part of an inch in thickness. The same has been clearly proven, upon inspection, to my entire satisfaction. I can, moreover, produce the evidence to corroborate what I here say.

Seven-eighths of all the shells cast on the old plan, with gauge for the same, there will not be one that will not vary in thickness of metal from $\frac{1}{8}$ to $\frac{1}{4}$ part of an inch, which can be clearly proven by measuring those shells cast on the old plan, at any establishment where they are cast upon said old plan, which fact clearly proves the superiority of the "Huestis plan." The consequence of the great variation in the old plan is the condemning, upon inspection, of such a number of them made in that manner.

It is unnecessary for me to add any more in reference to the plans for the construction of shot and shells, so fully I am convinced, and, in fact, every one that has seen both plans willingly and justly concedes the superiority of the "Huestis plan of molding and casting of shot and shells."

I am, respectfully, &c., your obedient servant,

W. F. EVANS,
Master-Founder U. S. Navy-yard, Norfolk, Va.

DAVID HUESTIS, Esq.,
Master-Founder New York Navy-yard, N. Y.

Mr. Huestis having made the offer to the Government, its acceptance does not debar the claimant from receiving a reasonable royalty on the use of his invention, after the one year's use (which was a gratuity) had elapsed.

The bill as introduced having been referred to the Navy Department, the following reply was received:

NAVY DEPARTMENT,
Washington, December 18, 1874.

SIR: I have the honor to acknowledge the receipt of your letter of the 16th instant, inclosing copy of Senate bill No. 928, June 12, 1874, for the relief of David Huestis, and requesting that the committee may be furnished with the views of the Department as to the propriety of legislation in his behalf.

The claim of Mr. Huestis was brought to the attention of the Department by the Committee on Naval Affairs of the House of Representatives, in February, 1873, and in returning the papers to the chairman of that committee, on the 13th of that month, I expressed the following opinion: "No additional legislation would be necessary to enable the Department to settle the claim, but there is no fund at its disposal out of which the amount could be paid."

With regard to the bill, No. 928, I would suggest that it be amended so as to authorize and direct an investigation of the claim, as it proposes to do, but at the same time give the Secretary of the Navy the authority to award such a sum as he may find to be equitably due for the use of said patent, without confining the award to the basis of payments to private parties for the use of the patent, as it might not be deemed to the interest of the Government to adopt such a basis.

The bill would meet the views of the Department by striking out, in lines 7 and 8, the following words: "*upon the same royalties as paid by private parties for the use of said patent*"

Very respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

Hon. A. H. CRAGIN,
Chairman Committee on Naval Affairs, U. S. Senate.

The records of the Ordnance Bureau will show the number of shell cast by the Huestis method, and the committee are of the opinion that this case is one eminently proper to leave to the sound discretion of the Secretary of the Navy to hear and determine, he having every facility to adjust the claim with the least possible delay and expense to both Government and claimant.

Entertaining these views, your committee report the accompanying bill with an amendment, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1875.—Ordered to be printed.

Mr. MORRILL, of Maine, submitted the following

REPORT:

[To accompany bill S. 585.]

The Committee on Naval Affairs, to whom was referred the memorial of Oliver Moses and others, owners of the ship John Carver, having had the same under consideration, ask leave to report :

That the facts stated in the memorial are, upon examination, found to be substantially true, as follows :

That Oliver Moses, Frank O. Moses, Galen C. Moses, Charles Owen, Robert P. Manson, citizens of Bath, Maine, and George W. Edge, a citizen of Richmond, Maine, were the sole owners of the American ship John Carver ; that said ship was commanded by George W. Edge, and that on the 2d day of July, 1861, George W. Edge, as master and agent, for the owners of said ship John Carver, of nine hundred and seventy-six tons burden, did charter said ship to the United States, for the purpose of carrying naval stores to the Department of the Gulf, viz, a full cargo of anthracite coal, to supply United States steamers at the mouth of the Mississippi River and other points.

That said charter was made by James S. Chambers, Navy agent at Philadelphia, said Chambers acting under the authority of the Navy Department.

That the charter on the part of the master and owners was made in good faith and performed to the best of their ability, in strict accordance with the terms of the charter-party.

That the rate of freight to have been paid by the Government was only the market rate of freights at the port of Philadelphia on the day of the date of the charter.

At the time of said charter the Gulf States were in rebellion against the Government, but their ports had been blockaded.

The United States, at the date of the charter of said ship, being at peace with all foreign powers, with the Gulf ports closed, a feeling of security pervaded the whole commercial interest of the country that the commerce of the United States was secure from any and all depredations from foreign or confederate cruisers.

That no insurance other than marine risks was placed upon American commerce until such time as it was known that privateers were upon the high seas.

Upon completion of loading said ship, Captain Edge, as a precaution, requested of the charterers that the ship be convoyed. This was refused. Then he requested that guns be placed on board, and this request was refused.

That on the 28th day of July, 1861, properly manned, stanch, tight, newly metaled, thoroughly fitted, and provisioned for six months, the ship proceeded to sea, with no insurance other than marine policies.

August 11, 1861, early in the morning, a brig hove in sight, and at 12 m., latitude 29° 51', longitude 67° 50', flying the French flag, fired a shot across the bows of the ship, and at once boarded her with a lieutenant, captain of marines, sailors, and a file of armed marines, who declared the ship John Carver a prize to the privateer Jeff Davis.

The officers and crew were ironed and transferred to the privateer. The ship was bored and set on fire by the privateers, and was a total loss.

That the Jeff Davis was the first known confederate cruiser, and the John Carver was the first capture made, upon the high seas.

That the capture of said ship was a warning to the whole commercial interest of the country, affording all an opportunity, if they chose to avail themselves, to protect

themselves against the depredations of privateers by placing war policies upon their vessels.

That the fact of privateers being upon the ocean preying upon American commerce was established beyond a doubt by the capture of the *John Carver*, and that the Government in its subsequent charters guaranteed the owners against loss by capture.

That the destruction of the *John Carver* virtually gave protection to the whole commerce of the country and to the Government, but are themselves deprived of its benefits.

That the owners have never received any remuneration for their loss.

It appears by the charter-party that the ship *John Carver* was in the employ and service of the United States at the time of the destruction by the rebel privateer *Jeff Davis*, and while in such service, under such charter-party and in execution thereof, was captured and destroyed. She was laden with Government supplies of coal for the Navy in the Department of the Gulf, and so an object of attraction to the assailants, as through her destruction a blow was aimed at the Government of the United States.

The case made by the facts is believed to be directly within the provisions of the act of March 3, 1849, (9 Statutes at Large, 415,) "To provide for the payment of horses and other property lost or destroyed in the military service of the United States," which provides for payment of damages for destruction of certain classes of property by the public enemy, the provisions of which were extended to the class of property for the destruction of which damages are claimed, by the fifth section of the act of March 3, 1863, (12 Stat., 743.)

The ship was chartered by the United States in a time of war, to engage in a service where she was liable to encounter the perils of that war. She was not, in any just sense, in the business of a common carrier, but was in fact in the military service of the Government, subject to military orders and having no option of her own, upon whom, on the plainest principles of justice as well as by the terms of the acts referred to, was the risk of the service.

It may also be noticed, as pertinent to the question of responsibility, that having asked for and having been refused either arms or a convoy, it was for the Government, it is submitted, to defend her against the public enemy, and failing to do so, the committee are of opinion, should re-imburse the claimants for the value of the ship, and recommend the passage of a bill, herewith reported, for the sum of \$76,000, as the value at the time when she left the port of Philadelphia.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3726.]

The Committee on Pensions, to whom was referred the bill (H. R. 3726) granting a pension to Catharine H. Gallagher, widow of John Gallagher, late a captain in the United States Navy, submit the following report:

This bill increases from \$30 per month to \$50 the pension which Mrs. Gallagher is now drawing as the widow of John Gallagher, late a captain in the United States Navy. Her pension has been reduced from what it was under the general law of June 30, 1834, and August 11, 1848, which was \$50 per month. She drew one at that rate from the 1st day of November, 1842, until 1st of January, 1871, when it was reduced to \$30 under the act of 1866. It is claimed that the Secretary of the Interior erred in his interpretation of the law in applying it to this class of cases.

We think the intention of Congress, however, is manifest enough that the highest rate of pension to be given widows in any case, whatever the rank of their husbands in the military or naval service, was \$30 per month, the rate which Mrs. Gallagher is now drawing. We know that Congress has in a few cases, by exceptional legislation, granted higher rates, but the committee do not feel inclined to multiply the exceptions, and therefore recommend, as we have in all cases of application at the present session for increases of pension to \$50 per month, that the bill be indefinitely postponed. The reasons will more fully appear in report No. 500, case of Mary W. Shirk.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3013.]

The Committee on Pensions, to whom was referred the bill (H. R. 3013) granting a pension to Samuel P. Kemp, submit the following report :

Kemp, a private in Company I, Seventh Regiment Ohio Volunteers, was placed on the pension-list on July 1, 1863, at the rate of \$8 per month. On the 8th of May, 1867, his rate was increased to \$15 per month. His rate for the last three years has been \$18. The House bill increases this to \$24. His disability consists of the loss of a leg above the knee, and he claims that, in consequence of the tender condition of the stump, he cannot wear an artificial leg, except at times, when he wears a line girth about the body and shoulders, to which is attached a simple peg, the wearing of which is always accompanied by pain. His application for an increase at the Pension-Office was rejected because his disability did not entitle him to an increase under the fourth section of the act of March 3, 1873. The Commissioner, after quoting the law, says: "It appears from the medical evidence on file that the pensioner does occasionally use a 'peg-leg,' which is construed to be an artificial limb within the meaning of the act."

The committee feel that they ought not to disturb the decision of the Bureau in a case like this, strictly within its jurisdiction, and when it is apparent that it possesses, for adjudicating questions of this kind, facilities, skill, and experience far beyond what an ordinary committee of Congress can be expected to have. The decision of the Commissioner is not so clearly wrong as to justify us in setting it aside, and therefore we recommend that the bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 948.]

The Committee on Pensions, to whom was referred the bill (S. 948) increasing the pension of H. Louisa Gates, submit the following report:

Mrs. Gates, widow of the late General William Gates, is now in the receipt of a pension at the rate of \$30 a month, the highest rate allowed by the general law to widows. This bill increases the pension to \$50 per month.

The committee recommend its indefinite postponement, for the reasons set forth in report No. 500, at the present session, made in the case of the widow of Commander Shirk, and because this case was considered and decided in the Forty-second Congress, when a like bill from the House of Representatives was before this committee, and upon their recommendation was indefinitely postponed by the Senate.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 3731.]

The Committee on Pensions, to whom was referred the bill (H. R. 3731) granting a pension to Bridget Collins, submit the following report:

Bridget is the widow of John Collins, late a private in Company I, Seventeenth Regiment United States Infantry. He was shot by one Haggarty, about 1 o'clock in the morning, on the day of September, 1869, in the streets of Lynchburgh, Va., while returning to camp, in consequence of a war of words with Haggarty, and soon afterward died of his wound in the hospital. Some of the witnesses say he had a pass to visit the town on the night in question. He seems to have spent a good part of the night, before starting on his return, at a saloon, where he was playing on a bagatelle-table. He took a drink of liquor in the saloon, but the witness says he was not intoxicated, and that he was not given to intoxication. With him were Boyd, a private in the same company, and Conway, the drummer-boy. The former details the circumstances of the attack. St. Clair, a corporal of the same company, is also a witness, but he was not present at the time of the shooting. Conway's affidavit is not furnished. The lieutenant-colonel of the regiment wrote to the widow from headquarters on the 25th of September, giving her the particulars of her husband's death as he had learned them. From this it appears that the deceased received a pass to be absent until midnight, and that he was killed by the assassin without any provocation.

Boyd, as above said, was with the deceased, and details the angry conversation that occurred before Haggarty ran into his house and got his gun. He also shows that it was 1 o'clock in the morning when the firing took place. Though the language which Collins used was not an adequate provocation for the attack, it was the cause which moved the assassin to attack him rather than Conway or Boyd.

No application has been made by the widow to the Pension-Office for a pension, nor is any reason assigned why she has not made one. She delayed some time before appealing to Congress. Her case is by no means clear of doubt on her own presentation. Her husband was not within the protection of his pass when he was shot. His imprudence in bandying words with Haggarty induced the attack.

The committee are of opinion they should not take jurisdiction of the case to decide it until, at least, the widow has applied to the proper tribunal. They therefore ask to be discharged from the further consideration of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. OGELSBY submitted the following

R E P O R T :

[To accompany bill H. R. 3698.]`

The Committee on Pensions, to whom was referred the bill (H. R. 3698) granting a pension to William C. Davis, have had the same under consideration, and report :

The evidence shows that Davis was a private in Company B, Eleventh Regiment Tennessee Cavalry, and after a service of about fourteen months was discharged for chronic rheumatism. It sufficiently appears the disease originated in the service, but, in addition, it appears that after an honorable discharge from the service, he started home, and encountered a detachment of the enemy, who fired upon and severely, almost fatally, wounded him. We can well understand these wounds may have aggravated the disability for which he was discharged; and although received when he was no longer a soldier, he was directly on his way home because of having been discharged for a disability received in the line of duty. Considered in the light of the spirit and letter of the pension-law, we think his name should be placed upon the pension-roll. We therefore recommend the passage of the House bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed and recommitted to the Committee on Appropriations.

Mr. SARGENT, from the Committee on Appropriations, submitted the following

REPORT:

On the 23d of December, 1874, the Senate of the United States adopted the following resolution:

Resolved, That the Committee on Appropriations be instructed to inquire whether the Light-House Board, as organized by law, is in the best form to promote its efficiency and harmonious action; and whether the supervision of the Secretary of the Treasury over the proceedings of said Board is as clearly defined by law as is necessary for the responsibility of said Board and the interests of the public service.

The committee find that the light-house service until the year 1852 was carried on under the Fifth Auditor of the Treasury, but that officer, who had no technical knowledge of the subject of light-house illumination, failed to satisfy the commerce of the country, and so many complaints were made by owners and masters of vessels, in regard to the inefficiency of the lights of the United States as compared with the lights of foreign countries, and particularly in regard to his objection to introduce the French or lens system of illumination, (which had become generally used by maritime countries to almost the entire exclusion of the reflectors,) that Congress, after sending a commission to Europe to investigate the European light-house system, enacted the law of August 31, 1852, organizing the present Light-House Board, under the Secretary of the Treasury as its *ex-officio* president, as follows:

Two officers of the Navy; two officers of engineers; two scientific civilians, whose services were at the disposal of the president; and two secretaries detailed, one from the United States Engineers and one from the Navy.

The Board thus organized, and under a chairman elected by the Board from its own members, and who presides in the absence of the Secretary of the Treasury, has from the date just mentioned to the present exercised the functions of an administrator of the laws and for the disbursement of the funds provided annually for the Light-House Establishment of the United States.

The appropriations for the light-house service have in later years amounted to rather more than three millions of dollars annually. The sea-coasts, rivers, lakes, bays, sounds, and harbors of the United States are divided into fourteen light-house districts, in each of which there are a light-house engineer detailed from the United States Engineers, and an officer of the Army or Navy as an inspector.

The persons in the immediate charge of the lights are called light-keepers, and they are men who, previous to appointment on the nominations of certain collectors of customs, have followed the usual avoca-

tions of mechanics and laboring-men. They receive an average pay of \$600 per year, and are said to compare favorably in intelligence and character with the keepers of lights in other countries.

The foregoing, *i. e.*, the Light-House Board, or the chief executive, composed of eight persons; the district officers, being a light-house engineer and a light-house inspector in each district; the light-keepers and the *employés* of various kinds (who number several hundred in the working-season,) constitute the Light-House Establishment of the United States.

The detailed orders of the executive board at Washington are carried out by the district officers, and they relate to the designing, the location, the construction, and repair of the light-houses, light-keepers' dwellings, steam fog-signals, and defense of light-house sites against encroachments of the sea, the purchase and repair of the optical or illuminating apparatus, which is considered the most important part of the light-houses, the purchase and care of the lands occupied for light and fog-signal stations, the purchase and supply of the oil and other articles used in light-houses, and of the coal used in the steam fog-signals. They relate also to the inspection of the condition as to repair and cleanliness of the light-houses and buildings connected therewith, of the efficiency of the optical apparatus, and of the capacity and fidelity of the keepers. To the above duties should be added the inspection of a small number of light-boats in the service, and the location and painting of the buoys which are placed to mark the channels in our harbors and rivers.

The scheme of illuminating our coasts is extremely simple, and it was adopted from the French in the early days of the light-house board. It consists (as a general rule, to which there are some exceptions) in placing the larger kinds or orders of lights with the most powerful optical apparatus which illumine areas with a radius of about twenty miles, on a general average of about forty miles apart, so that the illuminated areas shall touch, cross, or slightly overlap each other, to the end that no vessel coming upon the coast can fail in clear weather to see at least one light, and as the lights are varied in appearance, by making them fixed, revolving, flashing, and colored, a reference to the published list of light-houses shows the position of the vessel. Where prominent headlands or points present themselves at the proper intervals, they are selected for the location of these light-houses, but it frequently happens that the shore is unbroken for many miles and there are no such headlands or points, in which case they are placed on the coast, the object just named being always held in view, and these parts of the coast from which shoal water extends to a great distance having the higher towers and the most powerful optical apparatus. The lesser lights, with smaller optical apparatus, are placed on the lakes, bays, harbors, sounds, and rivers in those positions demanded by commerce and approved by the Light-House Board, and it may here be remarked that of the six hundred (600) light-houses in the United States, four hundred (400) are upon these interior waters.

In regard to our light-houses they compare favorably with those of other countries, and our later towers are said to be superior to those of any other maritime nation. Many of our constructions are on submarine foundations and are exposed in the bays and rivers to thrusts of enormous fields of moving ice, and on the outlying shoals and rocks to the full force of the ocean-waves. Some of them have been quite as difficult as the well-known Eddystone of England or Bell Rock and Skerryvore of Scotland.

The light-houses annually constructed are in fact located on the headlands and points by the laws making appropriations for them, generally

after reference to the Light-House Board, but it sometimes happens that lights are directed by law to be built against the judgment of the Board and before its opinion in regard to the necessity of them is obtained.

There are now on our sea-coasts, lakes, bays, harbors, sounds, and rivers about six hundred (600) light-houses, twenty-one (21) light-boats, and forty (40) steam fog-signals. The number of light-houses has about doubled since the organization of the Board in 1852, and the number of light-boats has decreased one-half by the substitution of light-houses on screw-pile foundations, which are so much more efficient guides to commerce, and so much less expensive in their maintenance, that the remaining light-boats are giving way to light-houses on submarine foundations as fast as the appropriations and the nature of the sites will admit.

Having stated the origin, the organization, the duties, the scheme of illumination, and the extent of our Light-House Establishment, it is due to the Light-House Board to state that much credit is due it for the improvement in our light-houses, light-keepers' dwellings, and their accessories, since the transfer of the duties from the Fifth Auditor of the Treasury, and especially for the adoption of the French or lens system of illumination instead of the reflector system formerly used. The first cost of this apparatus is very great, being for the larger lights from eight thousand to twelve thousand dollars, but it is more than compensated for by the use of one lamp instead of several and by the economy of all of the light of the flame. To the above should be added the reduction in the annual expenditures and the increase of the efficiency of the service by the substitution of light-houses on submarine foundations for light-boats.

It should now be stated that our light-house administration, as now organized, was nominally modeled after the system of France, which has been adopted by most countries having extensive sea-coasts. The French plan of light-house illumination has been followed by all countries, and to this day that country furnishes the major part of all the optical apparatus used in the light-houses of all countries. The administration of the French service, which has about the same number of light-houses and light-boats as our own, is as follows:

The executive duties of the central office are confided to two persons, acting under the immediate direction of the minister, one of whom is called the director and the other the secretary of the light-house service, and both are officers of the corps of government engineers. To advise the minister in regard to proposed new lights and improvements in the light-house service, there is an advisory board, called the *Commission des Phares*, or light-house commission, which is composed of engineers of high rank in the corps of government engineers, naval officers of high rank, and members of the Academy of Sciences. The construction, inspection, repair, and supply in the light-house districts are carried on, under the immediate direction of the director and secretary, by the light-house engineers who belong to the corps, to which are confided the other works of river and harbor improvement. General inspections are made from the central office by the engineer director and engineer secretary as far as necessary for the efficiency of the service, and by members of the advisory board, from time to time, when necessary and convenient; these officers having in general other duties under the government, in the various bureaus, at Paris.

It will be observed that while our system nominally followed the system of France, several important differences exist.

Our Light-House Board is executive instead of advisory; there are two secretaries in the central office instead of one; and in the districts, instead of having but one officer in each district, and he the light-house engineer, as in France, there are two officers in each district, one the light-house engineer, and the other an officer who may be of the Army or the Navy, and who is called the inspector of the district.

This diffusion of responsibility at the central office and its division in the light-house districts, the committee is constrained to believe, has led to want of economy in the expenditure of public funds, to a neglect in investigating, and adopting improvements in light-house illumination, and to the want of harmony, both in the central administrative board and in the districts, which is well known to have existed during the last year. This want of harmony might have been foreseen, and it is surprising that it has not developed earlier, since the executive duties of the light-house service, as will have been observed from what has preceded in this report, really form a whole, and it is hardly possible to divide them so as to prevent clashing.

In regard to what we conceive to be evidence of a want of economy and efficiency brought about by this diffusion of responsibility among so many persons in the central office, no one of whom is directly responsible under the law, and the division of duties in the districts between the two officers in each, we will instance the following:

1st. *The contingent expenses in the fourteen light-house districts are probably two hundred, certainly not less than one hundred and fifty, thousand dollars a year more than they would be if they were placed each under a single executive officer, as in the French and other light-house services.* Under the present system it results that there are many more steamers, clerks, officers, &c., employed than are necessary for the most efficient service, (and each steamer costs from fifteen hundred to twenty-five hundred dollars a month, or from eighteen thousand to thirty thousand dollars a year apiece,) and it also results that the inspecting officers commonly report as necessary for the light-houses, light-keepers' dwellings, optical apparatus, sea-walls, &c., pertaining to the light-stations, an amount of repairs very much in excess of the appropriations annually made for this purpose, so that in fact the light-house engineers are obliged in many cases to make second inspections, and see for themselves what repairs should be made and what can be deferred. Our light-houses are, many of them, very old, (some of them built before the present century,) and it requires the best judgment of the light-house engineers, who are charged with the duty of making the repairs, not to expend money injudiciously upon them. We are of the opinion that there is no sufficient reason why the entire duties of construction, inspection, supply, and repair cannot be well and efficiently performed by a single officer in each district, as they really form a whole, and cannot well be divided, so as to prevent interference; and as the average number of lights in each district is less than fifty, it is not reasonable to suppose that the light-house engineers, who must in any case erect and keep in repair the light-houses and costly and intricate optical apparatus, are not qualified to inspect them, from time to time, to see what repairs are necessary and if the keepers who manage this apparatus are capable and faithful in their duties.

To the division of duties in the districts between two officers in each may be attributed in a very large degree the fact reported in Senate Ex. Doc. No. 54, first sess. 43d Congress, page 269, that the light which we furnish to the mariner costs the country, for supply and inspection, eight times as much as in the French service, assuming the unit of

light adopted by light-house engineers and taking the mean of the costs of the entire light on the coasts of each of these two countries, (which have about the same number of light-houses,) unit for unit of light.

2d. *It would appear to the committee that our light-boats, of which there are twenty-one in service as reported in the annual report of the Light-House Board, just published, involve a yearly expenditure, for maintenance and repair, very much greater than formerly.*

If the appropriation acts of the last session and for several years past be compared with the appropriations in the earlier days of the Light-House Board, and even before the establishment of the present Board, it will be observed that the expense of maintenance and repair of each of the small number of light-boats in our service has been much increased. For the fiscal year 1870-'71 there was appropriated two hundred and thirty-two thousand two hundred and ninety dollars for the repairs and maintenance of twenty-five light-boats, or about nine thousand dollars each; for the fiscal years 1871-'72 and 1872-'73 there was appropriated two hundred and sixty-one thousand six hundred and forty-seven dollars for twenty-five light-boats, or about ten thousand five hundred dollars each. In the appropriation acts for each of the years 1873-'74 and 1874-'75 there was appropriated (in addition to special sums for the construction of new light-boats) for the maintenance and repair of twenty-two light-boats and seven relief light-boats the sum of two hundred and seventeen thousand seven hundred and thirty-two dollars, or, omitting the seven relief light-boats, which are laid up in dock and have no crews, nine thousand eight hundred and ninety-six dollars apiece, while in the early days of the Board (see appropriation act for the fiscal year 1852-'53) the cost of maintenance and repair was one hundred and twenty-six thousand six hundred and sixty-four dollars for forty-two light-boats, or three thousand and fifteen dollars apiece. For the fiscal year 1853-'54 the appropriation was \$262,768 for 47 light-boats, or \$3,465 apiece. A slight difference of cost might be supposed as allowable, for we are informed that in the reduction in the number of light-boats from forty-two in 1852 to twenty-two in 1874 by the erection of screw pile light-houses, more of the second-class light-boats have been removed than of the first class, but the difference in the number of the crews is slight, and it would be difficult, we think, to insist that the present system tends to economy, considering that the twenty-two light-boats appropriated for at the last session and for several years past have cost one hundred and fifty thousand dollars more, annually, than the same number of light-boats cost in 1852, even if allowance is made for a somewhat higher cost of wages and repairs.

3d. *We are strongly inclined to believe that the oil used in our light-houses costs in the neighborhood of one hundred thousand dollars a year more than it costs any other country using the same amount of oil for its lights, and that there is no valid reason for continuing this expenditure.*

After many years of experimenting with lamps for burning coal or mineral oil in the illumination of light-houses, by Dr. Tyndall, at London; Macadam, at Edinburgh; and the engineers of the French, English, and Scottish light-houses, as well as the scientists of the French advisory board, a lamp has within a few years been found which will burn this oil with perfect safety in light-houses, and these gentlemen have furnished such tests in regard to its inspection that it is practically as safe as water, as far as explosion and accidental fires are concerned. The invention of this light-house lamp and the use of this oil in light-houses, in spite of the opposition of the suppliers of oils formerly used, has resulted in great economy and efficiency, and is con-

sidered by the light-house authorities of Europe to be one of the greatest, if not the greatest, of the improvements in light-house illumination since the invention of the Fresnel lens. (See Ex. Doc., Senate, No. 54, 1st sess. 43d Congress, pages 88, 89, 190, and 268.)

Mineral-oil is said to be more easily lighted and more cleanly; the constancy of its light is not dependent on the watchfulness of the keepers, as the wicks do not require to be trimmed at all, while the oil-lamps now in use in our light-houses must be trimmed several times during the night. It is not affected by the severest cold, while other oils congeal at comparatively high temperature, and all of these qualities are of the highest importance in light-house illumination.

The protracted experiments above mentioned extended through several years, as we have said, and the difference of cost of the mineral (coal) oil, as compared with the cost of the oil actually used during the experiment, and before the former had been definitely adopted, was, for the countries of Great Britain and France alone, probably not less than a million of dollars. We learn that the amount of lard-oil just contracted for by our Light-House Board, for use in our light-houses in the fiscal year 1875-'76, is 116,000 gallons, and the average cost is \$1.22½ per gallon. The cost of mineral (coal) oil, subjected to the same tests as prosecuted by the British and French light-house authorities, is 36 cents per gallon, making a difference of cost for our light-houses in one year of more than \$100,000. The committee are of the opinion that, while the protracted and costly experiments could not have been avoided for the countries just mentioned, they can be, and should be, in this country, and that the experiments and the actual use in light-houses, which have satisfied both the scientific and the practical light-house authorities of all countries of the world, as far as known, except our own, should, in view of the fact that each year's delay costs our country more than \$100,000, and each day's delay \$275, have caused the Light-House Board to have taken in hand at once the slight modifications required in the light-house lamps, and to have advertised for a supply of the new oil, giving the tests to which it would be subjected, and which were kindly furnished to our Government, with sample of light-house lamps in actual use, by the light-house authorities of Europe. If it should have been found that our refiners could not immediately furnish it, a sufficient quantity of the oil in actual use in Europe for light-house purposes could have been imported at a price not to exceed 36 cents per gallon for use until a regular supply could be obtained in this country. If this step should have been considered too precipitate, (we do not think under the circumstances narrated it would have been,) it might be supposed that advertisements would have been made by the Board for samples to be subjected to competitive test in the laboratory, while a practical trial should be made in prominent light-houses like Cape Ann, or Fire Island, or Barnegat, where it could have been reported upon by masters of passing vessels, although there can hardly be a doubt, from what the gentlemen before named have said of it, that for brilliancy it is superior to any other oil.

It appears, however, from the last Light-House Board report that neither of these plans has been adopted, and that the propriety of saving \$100,000 a year in its expenditure for oil did not have sufficient weight with the board, and that it proposes to adhere indefinitely to the use of lard-oil now supplied to our light-houses.

4th. We believe that it may be truthfully said that the Light-House Board does not investigate and keep pace with the improvement made in light-

house illumination and other means used for the protection of life and property on our coasts and waters.

The principal maritime countries have introduced into some of their light-houses which are deemed of especial importance, such as those at the mouth of the river Seine, in France, the entrance to the river Tyne, which carries the immense commerce of Newcastle, in England, the two lights which mark the straits of Dover, and the light-house at the entrance of the Suez Canal, electric lights, which are, when compared with our most powerful sea-coast lights, as ten to one in illuminating power. (See Senate Ex. Doc. No. 54, first sess. Forty-third Congress, pages 121, 220, and 269.) The electric light is thus in actual use, and on the recommendation of such a scientist as Faraday, who said of it, "The light produced is powerful beyond any other I have seen applied in light-houses, and in principle can be accumulated to any degree; its regularity in the lantern is very great; its management is easy, and its care may be confided to attentive keepers of ordinary degree of intellect and knowledge."

Improvements in gas-light for light-house illumination have recently brought about its introduction also into the light-houses of Europe with entire success. Sir David Brewster and Dr. Tyndall have both been marked in their commendation of its excellent qualities for this purpose, and the latter has especially called attention to its "handiness, distinctiveness, and power of variability to meet the changes of weather." This light has also a power of 2,000 candles, or about ten times the power of our most powerful sea-lights. It is said to be cheaper than the light of the common oil-lamp used in light-houses, and can be managed by light-keepers of the most ordinary capacity. (See Ex. Doc., Senate, No. 54, 1st sess. 43d Cong., p. 158 and following.)

We cannot but believe, especially after the introduction of both the electric and gas lights in the most important positions in Europe under the auspices just mentioned, and their actual use for many years with success in some of the most important sea-lights in the world, that a light of 2,000-candle-power is better under all circumstances of sea-coast illumination than one of one-tenth that power, and none who have approached the harbor of New York, and have witnessed the anxiety of the ship-master in the haze and the sleet to catch the friendly ray from Barnegat or Fire Island can doubt that a few of the points on our coasts, on which the safety of life and treasure especially depends, should be provided with the most powerful illuminating agents known to man, and that we should not be behind any maritime nation in this regard. We regret to see, however, as we do in the last report of the Light-House Board, that it hesitates to introduce either the electric or gas light, even at an experimental station, for reasons which, in view of the fact that they are simply theoretical, (we have no such lights from which the conclusions could have been practically derived,) will not satisfy commerce or the country.

As another instance under this head we should state that our light-boats are not as efficient and useful as they should be, for the reason they are provided only with fixed lights, while other countries, particularly England, in its splendidly lighted approaches to Liverpool, have the major part of their light-boats supplied with revolving apparatus, giving, without increased expense for maintenance, a light which catches the eye of the mariner at a much greater distance and in much thicker weather than a fixed light. (See Ex. Doc., Senate, No. 54, 1st sess. 43d Cong., p. 271.)

It is believed that these errors in the administration of our light-house service arise from the present system which diffuses the responsibility of the central office and divides it in the light-house districts. The Secretary of the Treasury is not in fact responsible, for the law provides no way by which he can know of the acts of the board, (it is not even required by law to make report to him,) except by an attendance at its meetings from week to week, which he has not time to do; and it is probable that not all the members themselves are responsible for the want of harmony, the want of economy, or the want of efficiency. Under the present system, however, it is impossible for any one outside the board to tell who is responsible and who is not. The responsibility to Congress and the country is diffused. It covers all in spite of themselves; and those to whom the errors are due, share it with those who are capable, efficient, economical, and forbearing.

We believe that as diffusion of responsibility in the board itself, and between its two secretaries in the central office, and between two executive officers in each of the fourteen light-house districts has created the evils mentioned in this report, so centralization and contraction of responsibility under the immediate supervision of the Secretary of the Treasury will cure them.

Boards for the transaction of *administrative* duties have been and are considered objectionable, and we cannot believe that the constant employment of a large number of officers of high rank, and of civilians who have other duties to attend to, for *administration* is more necessary for the light-house service than for any other of the Bureaus at Washington, in some of which the duties are very much more varied in their character, and involve the expenditure of very much larger amounts of the public funds.

FIRST MODIFICATION PROPOSED.

We therefore suggest, as the first modification of the existing law, that the Light-House Board, composed as it is now, of United States engineers, naval officers, and scientists, should be changed from an administrative into an advisory board. The duties of the latter should be to advise the Secretary in regard to the necessity, the proper location and plans of new lights proposed by the light-house executive, or demanded by commerce, and in regard to the propriety of adopting any important inventions and improvements in the apparatus or material used in light-house illumination.

As far as possible, the precise officials to form this advisory board should be determined by law, so as to make it unnecessary for the Government to be at the expense of having officers of high rank in Washington on this duty alone. The sessions of the advisory board would be infrequent, as compared with the sessions of present administrative board, and we have no doubt the duties could be performed by any of the Bureau officers at Washington who might be designated by Congress, without undue interference with their other and regular duties.

No inspections from the central office would be required which could not, from time to time, be performed by the two executive officers proposed, and hereinafter to be mentioned, and by members of the advisory board, whenever convenient to them and necessary to the service.

SECOND MODIFICATION PROPOSED.

We are also of the opinion that the executive duties at the central light-house office should be confided to not more than two persons, one

of whom might be called the director and the other the secretary of the light-house service. The former should perform, under the immediate direction of the Secretary of the Treasury, the executive functions of the present Light-House Board, and the latter, under the immediate supervision of the director, should perform the duties now performed by the two secretaries of that board. The responsibility for economy and efficiency, we think, would be more direct and tangible, should it be placed, as in other light-house services and in other Bureaus in Washington, upon a single officer, than it is now under the present system.

Two secretaries at the central office are not necessary, and it is another departure from the French system, from which ours was nominally derived, and this duplication which tends to a want of harmony, we believe, exists in the light-house service of no other country.

Fresnel, the inventor of the system of light-house illumination which bears his name, and which has been adopted by all maritime countries, was the first engineer secretary of the French light-house service, and he and his successors have carried on, with and under the director of that model service, all the administrative duties of the central office at Paris.

The disbursements are quite large at the central office as well as at the light-house districts, and we are of the opinion that one officer who is by experience well qualified in the control of public money and accounts, and is conversant with all the duties of the light-house service, would perform the duties of secretary with more efficiency and economy than they are now performed by two secretaries.

THIRD MODIFICATION PROPOSED.

There is no doubt but that the duties of construction, inspection, supply, and repairs of light-houses and steam fog-signals in each of our light-house districts, can be performed by a single officer in each district. These duties, as has been before stated, comprise the construction and repair of our six hundred light-houses, the light-keepers' dwellings, steam fog-signals, and the defenses of the light-house sites against encroachments of the sea; the care of our twenty-one light-boats, and the buoys in our harbors and rivers; the erection and repair of the illuminating or optical apparatus used in light-houses; the purchase and care of lands occupied by the light-house and steam fog-signal stations; the supply of the oil, and the purchase and supply of the other articles used in light-houses, and the coal used in steam fog-signals, and also inspections. These inspections are for the purpose of observing the condition as to repair, and the cleanliness of the light-houses and buildings connected therewith, the efficiency of the optical apparatus, and the capacity and fidelity of the keepers. These duties are now divided between two officers in each light-house district, differing in this regard from all other countries, and this unusual and unnecessary division costs the country, as before remarked, from one hundred and twenty-five to one hundred and fifty thousand dollars a year.

FOURTH MODIFICATION PROPOSED.

While in other countries all the duties of each district are performed by a single officer in each district, and we are fully convinced that the light-house engineers of the United States are as fully capable of superintending the service of our twenty-one light-boats as the engineers of any other country; and while, before the late war, the light-boats in

the New England districts were for some years under engineer superintendence, giving entire satisfaction to commerce, yet we would remove any possible objection to the plan of placing all the duties connected with our *light-houses and shore fog-signals* under the charge of a single officer in each district (which would, as has been shown, result in so much economy and efficiency,) by suggesting as a fourth modification in our light-house service, that the superintendence of our twenty-one light-boats be placed in the charge of masters of our revenue-marine, using, for the location, supply, and inspection of these light-boats, the vessels of said revenue-marine, under such regulations as the Secretary of the Treasury may provide. Should this plan be authorized by law, the great expense of our light-boats, which has been mentioned, and which is due to the steamers now used in their inspection and supply, would in a very great degree be avoided.

We would suggest that the purchase, inspection, and painting of the buoys in our harbors and rivers be placed also under the charge of the masters of the revenue-marine, but the thirty-four vessels of that service, although more than an abundance in number, are, we understand, not suited for going into the shoal water in which these buoys are placed. There is no way by which economy in the buoy-service can be brought about (it now costs about three hundred thousand dollars a year) except by placing the buoys in charge of the light-house engineers, so that the steamers used by them, and necessary for their operations, can be utilized as far as possible for inspecting and painting the buoys and replacing them when they go adrift. We see no objection to this plan, considering that the channels in our harbors and rivers are in many cases made, and are dredged and kept in order by our Government engineers; that, as before stated, the buoys in our harbors on the coast of New England (and also on the northern lakes) were before the late war under engineer superintendence, and that the important buoyage of the approaches to Baltimore are actually in the charge of the light-house engineer of the fifth light-house district, giving entire satisfaction, as we are informed, to the very great and increasing commerce of that port.

In conclusion, the committee believe that if, instead of the present administrative board, there should be one advisory to the Secretary of the Treasury, and acting under such laws as would prevent the construction of any new light-house or light-boat, and the making of any important change in the mode or the material of illumination without its assent; if there should be for executive business but one head of the light-house service, single, and acting under the immediate direction of the Secretary of the Treasury; and if, in the central office, there should be but a single executive secretary, and in each of the light-house districts but a single executive officer, responsible to the director of the service, the country would save several hundreds of thousands of dollars a year, and the efficiency of our lights would not be inferior to those of any other maritime nation.

Finally, we are convinced that the responsible duties of the light-house service form a whole, and cannot be divided without detracting from its efficiency and adding to its expense. Everything connected with it should be, and is in other countries, arranged systematically. Light-houses are placed in a system—that their lights should cross; the towers are constructed on a system—that they shall not be undermined by the sea nor overturned by the severest gales; the prisms of the intricate and expensive optical or illuminating apparatus are all calculated by engineers with the greatest accuracy, to the end that the globe of rays of the light-house lamp shall be concentrated by refraction and

reflection into a sheet of rays which shall cover the sea from the horizon to the shore; the lamp is managed with the greatest nicety; the material which burns; the quantity which must be consumed per hour to give the best light; the shape of the flame; its height, its breadth, and its position with reference to the focus of the optical apparatus. If it is a fraction of an inch too low, or too high, the rays go to the sky, or fall near the shore, and the keeper may not observe the error, for he cannot see for himself, after it leaves his lantern, the beam of light which he guards for the safety of the ship which is, unknown to him, approaching the coast in the darkness and the storm. The whole system hangs together. It should be under one executive head, and, more than in any other service, every *executive* officer of this service should know thoroughly and well every detail of it.



IN THE SENATE OF THE UNITED STATES.

[FEBRUARY 4, 1875.—Ordered to be printed.]

Mr. WASHBURN submitted the following

REPORT:

[To accompany bill S. 950.]

The Committee on Claims, to whom was referred the bill (S. 950) to pay the First National Bank of Saint Albans, at Saint Albans, in the county of Franklin, and State of Vermont, having considered the same, submit the following report :

On October 19, 1864, occurred what is known as the Saint Albans raid. About 3 o'clock in the afternoon of that day parties of from three to five men each, armed with navy-revolvers, concealed under their coats, entered the three banks in the village of Saint Albans, Vt. In two of the banks the cashiers and tellers were present, in the third the cashier was alone. The men stated that they were confederate soldiers; that they had come to rob the banks and fire the village; and, presenting their pistols, threatened the officers of the banks with instant death if they should make any resistance or give any alarm. They then proceeded to rob the banks. Meantime other parties were seizing horses through the town, and, meeting with some resistance from the citizens, they began to fire on men passing in the streets, killing one or two and wounding others; and they also attempted to fire a hotel and some other buildings by the use of Greek fire. The banks were soon plundered, horses enough to mount the raiders seized, saddled, and bridled, and within thirty minutes after the banks were entered the whole party was galloping toward Canada. The citizens of Saint Albans, as soon as they recovered from the surprise of such an unexpected attack, armed and dispatched a company in pursuit of the raiders, and, by their active efforts that night and the next morning, ten of the raiders were taken and \$74,000 of the stolen money recovered. Proceedings were begun in the Canadian courts for the extradition of the raiders thus taken, but the courts decided that their deeds were the acts of belligerents and not robbery and murder; that therefore they could not deliver them under the extradition treaty, and they were accordingly discharged.

June 22, 1864, the First National Bank of Saint Albans had been designated a depositary and financial agent of the United States, and had been authorized to receive subscriptions for bonds and Treasury notes of the United States. They did receive, in September and the early part of October, subscriptions to the amount of \$35,000 for the three-years' coupon Treasury notes bearing $7\frac{3}{10}$ per cent. interest, issued under the act of June 30, 1864. The money on these subscriptions was paid into the bank and placed to the credit of the Treasurer of the

United States; report thereof was made to him, the Treasury notes were ordered for the subscribers, and, October 15, 1864, were received to the amount of \$35,000. The bank immediately notified the subscribers, and by the 19th they had delivered \$6,350 of them to subscribers residing in the vicinity. The remaining notes, \$28,650, being the subscriptions of thirty persons, were seized and carried off by the raiders, together with large amounts of money and other property in the safes of the bank. The thirty subscribers demanded the delivery of the notes or the return of the money paid by them, and the bank, recognizing the demand as both morally and legally valid, paid to the subscribers their respective amounts, and now seeks relief from the Government for the same.

Your committee are satisfied that this bank was a duly-authorized agent of the Government; that without any fault or negligence it sustained this loss, and that its claim for this amount, \$28,650, is just. We strike out of the bill the clause directing the payment of "interest thereon from the nineteenth day of October, eighteen hundred and sixty-four," and recommend the passage of the bill as amended.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill S. 1241.]

The Committee on Pensions, to whom was referred the petition of James Ballard, to be restored to the pension-rolls, report :

James Ballard, a native of North Carolina, was placed on the pension-roll at the rate of half pension, or \$4 per month, for wound received in battle on the 22d of July, 1864. Under recruiting orders from the commanding officer of the Third North Carolina Mounted Volunteers, Ballard enlisted as a private in Company G of said regiment, June 11, 1864, and seems to have been promoted to rank of second lieutenant in January or February, 1865; resigned July, 1865.

There is no doubt of his enlistment, service, and honorable discharge, or rather resignation, from the service, nor is there of his having received a severe wound in the engagement at Indian Creek, July 22, 1864, with the enemy. He was dropped from the pension-roll March 3, 1874, on the letter to the Commissioner of Pensions from the Adjutant-General of the Army, that James M. Ballard was a private in Company F, Capt. Wm. M. Keith, Sixty-fourth North Carolina (rebel) Regiment, Col. L. M. Allen; that he was enlisted at Marshall, N. C., July 22, 1862, by Captain Keith, for three years, and reported discharged, January 22, 1863.

The evidence furnished from the Adjutant-General of the Army, above quoted, is extracted from the rebel archives in the custody of the United States. To overcome the evidence of voluntary enlistment in the rebel service, James Ballard testifies, under oath, November 2, 1874, that he was a loyal Union man all through the war; that he refused to enter the rebel service, and did not do so until conscripted by a Captain Anderson, whose company he joined upon the express condition that the regiment to which he belonged, and of which his company was a part, (the Sixty-fourth North Carolina,) was to be kept in the State, and was not to be placed in the rebel service in the field; that in a short time, under a suspicion of his Union sentiments, he was placed in prison, and that in a few days he effected an escape and made his way through the country, with other friends and neighbors, to the Union lines, and joined the Union Army; and that he was not in Capt. Wm. M. Keith's company, Sixty-fourth North Carolina Regiment, commanded by Col. L. M. Allen. Joseph M. Roberts, James M. Chandler, and B. M. Cox, neighbors and acquaintances of James Ballard, all testify, under oath, October, 1874, that they personally know Ballard did join the company

of Captain Anderson under the distinct understanding that the regiment was not to go out of the State, and that he did this to avoid conscription; that he was a Union man and a Lincolnite, and that he did escape from said company and go over to, and join, the Union Army.

We think, with such testimony as to the actual personal history of the petitioner, and to the facts set up in his petition denying the military history imputed to him by the muster-rolls in the rebel archives from living witnesses now residing in North Carolina, we ought to construe any real doubts in favor of the wounded soldier who, without doubt, served faithfully for more than a year in the Union Army, and that, too, as the proof fully shows, after great personal risk and sacrifice in passing through the country to the Union lines in order to enlist as a soldier in our service.

We therefore recommend the passage of the accompanying bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. PRATT submitted the following :

REPORT:

[To accompany bill S. 1246.]

The Committee on Pensions, to whom was referred the petition of Abraham Ellis, of Kansas, praying to be allowed a pension, submit the following report :

The petitioner alleges that he was appointed post quartermaster, with rank as first lieutenant, at Barnesville, in Bourbon County, Kansas, on or about the 10th day of September, 1861, and that he discharged his duties as such until the 7th day of March, 1862, and that while in the service, on the last-named day, while stopping at that place, and in the line of his duty, a raid was made on the town by Quantrell and his men, in which he was shot by Quantrell himself, the ball entering his forehead and inflicting a terrible wound. He claims that he volunteered under the call of General James H. Lane for the purpose of repelling the threatened raid by General Sterling Price; that a few partially organized regiments were stationed at several points along the border, such as Forts Scott and Lincoln and at Barnesville; that a considerable amount of commissary and quartermaster's stores were accumulated at the last-named place, and it was deemed necessary to leave some one in charge of said stores, and he was selected for that purpose by Colonel Jennison, of the Seventh Kansas Regiment, and by acting Brigadier-General Lane to take charge of them as quartermaster, with the rank of first lieutenant; that after this he was recognized as quartermaster by all the officers along the border, and drew commissary and quartermaster stores for the irregular troops and other forces stationed there, and that he remained on duty at that place until captured and wounded by Quantrell and his men. All of his papers fell into Quantrell's hands; he was left for dead on the ground, but recovered after five months of medical aid and nursing.

He says that Congress made an appropriation of \$100,000 to pay the irregular troops in Kansas, and his claim was audited and paid in the spring of 1863.

He claims that subsequently he was mustered into the service in Company D, Fifteenth Kansas Regiment, and was detailed as signal-officer, and continued in that position until June, 1865, when he offered his resignation and was honorably discharged from the service.

The evidence shows that he was mustered in as first lieutenant of the company September 17, 1863, and was honorably mustered out February 22, 1865.

He subsequently made application to the Pension-Office for a pension, but his claim was rejected. The Commissioner of Pensions informs the Committee by letter of December 22, 1874, that the records of the War Department and of the Auditors of the Treasury Department failed to show that Ellis was in the service of the United States at the time the alleged injury was received.

Sidney Clark swears that he was a clerk to Maj. Gen. James G. Blunt during the year 1862, on a commission to audit the claims of the irregular brigade known as the "Lane Brigade," in a campaign in the States of Kansas and Missouri in the fall of 1861 and spring of 1862; that he was personally acquainted with Ellis, who was an acting first lieutenant, serving as quartermaster in said brigade, and that his claim as such was allowed and paid by Lieutenant Kemble, at that time serving as disbursing officer at Fort Leavenworth.

Capt. J. B. Hannum, of the State Militia of Kansas, swears that he was on duty a large part of the time in the fall and winter of 1861-'62, in the vicinity of Barnesville; that Ellis was stationed there early in September, 1861, as quartermaster and acting commissary, and that he was recognized as an officer by the officers at Fort Lincoln, as he drew commissary stores from that place; that he occupied a large store-room, and issued rations to troops stationed there or passing by, and also that he purchased forage, beef, &c., and issued them; that he was there on duty as quartermaster and acting commissary from September till March following, when he started to Fort Leavenworth to draw funds to pay for forage. This last fact is stated on information received from the petitioner.

A practicing physician examined Ellis three days after his wound, and found the ball impacted between the external and internal tables of the frontal bone, having broken through the cranium and impinged on the brain, which ball he extracted. Ellis remained in a very critical condition for several months, but recovered in August, 1862, and, as stated above, entered the service in 1863.

There is no evidence as to the extent of his present disability.

This recital of the petition and evidence is sufficient for the purposes of this case. It will be seen that Ellis does not claim to have been in the regular service of the United States. He does not claim to have been enlisted and mustered into the service by its authority; nor was he at the time he was wounded attached to or operating with any body of troops in the United States service; nor can it be properly said that he was wounded in any battle with the rebels.

We are not informed whether the militia of Kansas was organized, in pursuance of the laws of that State, into divisions, brigades, regiments, and companies. If such was the case, the officers were doubtless commissioned by the governor, and probably he was clothed with the power of appointing the quartermaster and commissary generals. But the petitioner makes no allusion to any such appointment as held by him; nor does he show any authority on the part of General Lane or Colonel Jennison to confer that office on him. He constantly refers to the military organizations in that State as irregulars, from which we infer that those joining them came forward spon-

ABRAHAM ELLIS.

taneously, and accepted such men as Lane and Jennison as leaders, and subjected themselves to their authority with the patriotic object of serving their State and the Union in repelling the inroads of rebels, and inflicting upon them such punishment as was in their power.

While the case does not fall within the letter of the pension-laws, the majority of the committee are of opinion that it falls within their spirit and equity, and direct me to report the accompanying bill and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

MR. PRATT submitted the following

REPORT :

[To accompany bill H. R. 1142.]

The Committee on Public Lands, to whom was referred the bill H. R. 1142, submit the following report :

On the 8th of August, 1846, Congress granted certain lands to the Territory of Iowa to aid in the improvement of the navigation of the Des Moines River. The grant was of "one equal moiety, in alternate sections of the public lands, (remaining unsold and not otherwise disposed of, incumbered, or appropriated,) in a strip five miles in width, on each side of said river, to be selected within said Territory by an agent or agents to be appointed by the governor thereof, subject to the approval of the Secretary of the Treasury of the United States."

Soon afterward a question arose as to the extent of the grant; whether it extended simply to the Raccoon Fork, or to the northern limit of the State, or to the source of the river in Minnesota. This doubt arose from the purpose of the grant as it was stated in the body of the act, which was "to improve the navigation of the river from its mouth to the Raccoon Fork." Mr. Walker, then Secretary of the Treasury, as early as March 2, 1849, held that the grant extended on both sides of the river from its source to its mouth, and following this decision the Commissioner of the General Land-Office, by letter to the register and receiver of the land-office at Iowa City, directed them to withhold from sale all lands situated on the odd-numbered sections within five miles on each side of the river above the Raccoon Fork.

This construction was sustained by Mr. Johnson, the Attorney-General.

Mr. Ewing, the Secretary of the Interior, reversed the decision of the Treasury Department, in a letter addressed to the Commissioner of the General Land-Office, dated April 9, 1849, and held that the grant without an explanatory act of Congress terminated at the Fork.

His successor, Mr. Stuart, held a different opinion, and, in a letter to the Commissioner, dated October 29, 1851, said he was willing to recognize the claim of the State, and to approve the selections made without prejudice to the rights, if any there were, of other parties, thus leaving the question as to the proper construction of the grant entirely open to the judiciary.

Attorney-General Crittenden, to whom Secretary Stuart had referred the question for his opinion, decided, on June 30, 1851, that the grant did not include the land above Raccoon Fork.

Under the ruling of Mr. Stuart, it is said in the report of the House

committee. the lands north of the Fork for a distance of 80 miles were certified as inuring to Iowa, under the act of August 8, 1846. Within this belt are contained all the lands in controversy.

There were still further rulings:

Thus, on the 25th of March, 1856, the Commissioner held that the grant did not extend above the Fork, and in this he was sustained by Mr. McClelland, the Secretary of the Interior, who was also sustained in his opinion by Mr. Cushing, the Attorney-General. There were other rulings and complications not necessary to be stated. The question finally came before the Supreme Court of the United States in what is known as the Litchfield case, (23 Howard, 66,) and at the December term 1859-'60 it was held that the grant was limited to the Raccoon Fork and did not extend above it. But in consequence of the acts of Congress of 2d March, 1861, and July 12, 1862, the same court afterward held in the Wolcott case, decided at the December term, 1866, that the grant extended to the north boundary of the State and inured to the benefit of the grantees of the State, notwithstanding the act of May 15, 1856, which attempted to divert a portion of these lands to the benefit of certain railroad companies.

This is but a partial recital of the legislation of Congress and the rulings of the Supreme Court, but is sufficient for the present.

Many persons having settled upon the lands claimed at the time to be part of the public domain, and not included in the grant of August 8, 1846, but which were subsequently adjudged to belong to the Des Moines Navigation and Railroad Company, as grantees of the State of Iowa, and being liable by the decisions of the courts to be turned out of possession of their homes unless they could come to terms with this corporation, an act of Congress was passed March 3, 1873, authorizing the President to appoint three commissioners to ascertain the number of acres and the value thereof, exclusive of improvements of all the lands lying north of the Fork as were held by said corporation or persons claiming title under it adversely to persons holding said lands either by entry or under the pre-emption or homestead laws, and on what terms the adverse holders thereof would relinquish the same to the United States.

A commission was accordingly appointed by the President, who made their report to Congress at its present session. (See Ex. Doc. No. 25, 43d Congress.)

The present bill proposes to relieve such persons in accordance with that report by purchasing the outstanding superior titles, and, if that cannot be done, by indemnifying them for losses by failure of their titles.

There are 344 beneficiaries under this bill; the total number of acres for which they claim compensation on account of failure of title is 39,540; and averaging the valuations put upon the lands by the commissioners at \$10.22 per acre, the sum to be appropriated to pay them is \$404,228.49. They do not claim for improvements. It is probable they are entitled to the value of these under the occupying claimant laws of Iowa.

All of these lands were entered as part of the public domain under the pre-emption and homestead laws—the greater number under the former. When they settled upon these lands does not appear; but the dates of filing their applications for entries are given.

The earliest date of filing is 1862, and the latest in November, 1868. In a portion of the cases patents have issued. As to the lands taken under the pre-emption laws, the settlers have paid the United States \$1.25 per acre, in a few cases \$2.50; for those taken under the homestead laws, they have paid the fees and commissions only, varying from \$7 to \$18 a tract, according to the number of acres entered. Supposing all

had been taken up under the pre-emption laws at \$1.25 per acre, the United States would have received for these lands \$49,440, a little in excess of one-tenth the sum demanded by this bill, as indemnity for failure of title.

The general law is, and has been since January 12, 1825, that when any tract of land has been sold erroneously by the United States, so that from any cause the sale cannot be confirmed, the Secretary of the Interior shall repay to the purchaser, his heirs, or legal representatives, or assignees the same amount of money he has paid, without interest. (4 Stat. at Large, p. 80.)

It appears in this case that all the lands in question were withdrawn from market by the Secretary of the Interior on October 30, 1851, on which day he approved the selections made by the State north of the Racoon Fork as inuring to her under the grant made by the act of August 8, 1846. The amount thus certified to the State was 271,572 acres.

Under and pursuant to the contract made by the State with the Des Moines Navigation and Railroad Company on 9th of June, 1854, the State of Iowa conveyed to this company in 1858 all the lands granted to the State by the act of 1846, a belt eighty miles long above the Fork, except 25,487.87, which had been sold by the United States at the Iowa City land-office in 1848, as to which latter lands there has never been any question of title.

By repeated decisions of the Supreme Court of the United States all the lands thus certified to Iowa inured to the benefit of this company under the acts of Congress above quoted, of March 2, 1861, and July 12, 1862. This court decided May 13, 1867, in the Wolcott case, (5 Wallace, 681,) that the reservation made by the Secretary of the Interior in October, 1851, was made under competent authority vested in the Department. It results that the settlers could found no valid claims upon the land by settlement and cultivation, after that withdrawal was made.

The Wolcott decision seems to have been misunderstood by the Secretary of the Interior. He treated the lands in question as restored by force of that decision to the public domain and subject to the pre-emption and homestead laws, and hence the Commissioner of the General Land-Office, by an order made May 20, 1868, opened the lands to entry under the pre-emption and homestead laws. In point of fact they belonged to the Des Moines Navigation and Railroad Company, under the contract and conveyance above specified. But between these dates, October 30, 1851, and May 20, 1868, 27,852 acres of the lands in question were occupied by settlers, claiming title under the pre-emption and homestead laws, notwithstanding that during all this interval the order withdrawing them from market was in force.

Under such circumstances we hold that no legal or equitable title can be set up by the settlers; they were bound to know as matter of law that the certification of the lists by the Secretary was a valid act, and the lands were no longer liable to entry.

As to the lands entered subsequently to the letter of Mr. Browning, of May 9, 1868, and the order of the Commissioner, it appears that the company immediately took steps to enjoin the officers of the local land-offices from allowing entries to be made, and accordingly injunctions were issued by the United States circuit court for the district of Iowa. These injunctions the registers and receivers of the land-offices at Fort Dodge and Des Moines were ordered by the Commissioner to disregard. This conflict of opinions resulted in a suit and called for another decision of the Supreme Court at the December term, 1869, (*Hannah Riley vs. William B. Welles*), when it was definitely ruled that the

settlers entered upon the lands without right, and their possession was continued without right, and that the permission of the register to prove up the possession and improvements, and to make the entries under the pre-emption laws, were acts in violation of law, and void, as was also the issuing of patents.

The court say in this case as follows :

In the present case the defendant claims title under, and in pursuance of, the pre-emption act of September 4, 1841.

Her husband took possession of the lot in 1855, and she was permitted by the register to prove up her possession and occupation May, 1862. The patent was issued October 15, 1863.

It will appear from the case of *Wolcott vs. The Des Moines Company*, that the tract of land, of which the lot in question was a part, had been withdrawn from sale and entry on account of a difference of opinion among the officers of the Land-Department as to the extent of the original grant by Congress of lands in aid of the improvement of the Des Moines River, from the year 1846 down to the resolution of Congress of March 2, 1861, and the act of July 12, 1862, which acts, we held, confirmed the title in the Des Moines Company. As the husband of the plaintiff entered upon the lot in 1855 without right, and the possession was continued without right, the permission of the register to prove up the possession and improvements, and to make the entry under the pre-emption laws, were acts in violation of law, and void, as was also the issuing of the patent.

The reasons for this withdrawal of the lands from public sale or private entry are stated at large in the opinion in the case of *Wolcott vs. The Des Moines Company*, and need not be repeated. The point of reservation was very material in that case, and we have seen nothing in the present one, either in the facts or in the argument, to distinguish it.

Since the acts of 1861 and 1862 were passed by Congress, the rulings of the Supreme Court have been uniform that all the lands embraced in this controversy belonged to the Des Moines Navigation and Railroad Company.

Notwithstanding the opening of the land-offices in 1868, by the direction of the Secretary, to the entry of these lands as Government lands, it seems to the committee that the settlers were put upon their guard, not only by the decision in the *Wolcott* case, but by the injunctions granted by the circuit court, that there was a question as to their right to enter the lands. They chose to take the risk, and the ultimate decision proves they acquired no title. From the very start there was a cloud of doubt. They cannot, in face of these facts, be regarded as innocent purchasers. The intrinsic value of the lands at the time when they made their filings and entries was probably nearly as great as now, aside from the improvements. But the committee understand the fact to be that the lands in controversy were all settled upon while the order was in force withdrawing them from sale, although many applications for entering at the land-office appear to have been made since.

The conclusion of the committee is, that the settlers show no valid claim to relief by Congress, the general law making ample provision for a return to them of the purchase-money paid to the United States; and they ask to be discharged from the further consideration of the subject, and recommend that the bill be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

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FEBRUARY 6, 1875.—Ordered to be printed.
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Mr. INGALLS submitted the following

REPORT :

[To accompany bill S. 1055.]

The Committee on Pensions, to whom was referred the bill (S. 1055) granting a pension to Charles H. Crippen, submit the following report :

In the application of Charles H. Crippen, late a private in Company D, Tenth Regiment Kentucky Cavalry Volunteers, for an invalid pension, the evidence shows that said Crippen is already receiving the full amount of pension allowed by law.

The committee therefore ask to be discharged from the further consideration of the bill, and that the same be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 580.]

The Committee on Pensions, to whom was referred the bill (H. R. 580) granting a pension to Rosalie C. P. Lisle, have considered the same, and make the following report:

The bill was examined, in connection with the testimony, and reported to the Senate adversely, on January 5, 1875, which report is hereto attached for reference. Upon the suggestion of important additional testimony to meet objections pointed out in the former report the bill was recommitted, and will now be considered with the testimony filed since the former report was made.

It will be seen that one of the grounds upon which the adverse report was made was the lapse of time intervening between the death of the son and the application to the Pension-Office by the mother—about ten years—which raised the presumption the dependence alleged now did not exist at the date of the sailor's death. Another ground was the value of property, real and personal, (about \$5,500,) owned by the claimant; and a third ground was the want of fuller evidence touching the contributions by the deceased toward the support of his parents.

To meet the suggestion in the former report with respect to the object for which monthly allotment was made by Joseph T. Lisle, viz, to reimburse advances made to complete his outfit for the service, the claimant states that her son did borrow \$100 for that purpose, which, however, was canceled in the will of the lender, who died before any payment had been made thereon; that the allotment registered was for the use of the family, and though claimant cannot remember, and will not therefore state, the precise amount received from this source during her said son's service in the Navy and before, yet says it constituted the principal means of support, exclusive of the donations made by friends of the family. She further states that her husband is and has been for the past ten years not only incapacitated for the performance of either manual or mental labor, as represented on the former examination, but utterly helpless, and has to be cared for as a child.

In answer to the objection in the committee's former report, viz, the apparent sufficiency of property upon which to rely for support, claimant states that they occupy their own house, but have not one farthing of income from any source, except from the contributions made by her

two surviving sons, who hold subordinate positions in the United States Navy, and from other friends and neighbors.

With respect to the first and principal objection in the former report, claimant testifies "that she did not know that she was entitled to a pension until about two years ago, when she was informed that she was entitled to one, and thereupon made her application to the Commissioner of Pensions.

The affidavit of Bishop Howe, of Central Pennsylvania, is filed in support of the claim of dependence at the date of the death of Joseph T. Lisle, and touching the character of claimant and the condition of her husband. It is in the following words:

The undersigned was, during the rebellion, and for several years before and after the war, rector of Saint Luke's Church, in the city of Philadelphia. Mrs. Rosalie P. Lisle was, during that period a member of that church, and her family attended worship there. Mr. Lisle never, within the time of my acquaintance, was a man of fortune. Before the beginning of the war he became much reduced, and began to be affected with a sort of paralysis, which has since brought him to utter helplessness, so that for several years last past he is moved to and fro like an infant, altogether by the strength of others.

Joseph T. Lisle, the eldest son, entered the service of the country as an assistant paymaster in the Navy, early in the war. The circumstances of the family were then very much straitened; they removed from a house of moderate size and expensiveness to one much more humble. And I have reason to believe that they often experienced great difficulty in obtaining needful supplies of food and clothing and fuel. I think they could not have been sustained had not friends ministered to their necessities; toward which relief I, as their pastor, felt it my duty and privilege from time to time to contribute.

Both Mr. and Mrs. Lisle, he in Philadelphia and she in Virginia, belonged to prominent families. The boys grew up with a manly pride, desirous to maintain for all their proper place in the social circle. Joseph, a youth of remarkable promise, was in nothing more conspicuous than in his filial deference and devotion to his parents. I do not at this date remember exactly how many dollars per month he appropriated out of his pay for their support, but I know that for a while he was their main dependence; and that his mother spoke often of the fact that Joseph sent all that he did not absolutely need for their maintenance.

The two surviving boys, both in the naval service, will be found on the records of the Department to be officers of whom the country receives and may expect good service. On these sons the family are now dependent for their livelihood. I will only add that my friend Mrs. Lisle is a lady of high character, on whose statements of fact, touching the provision which her son Joseph made for the family while in the service, I should place the most implicit reliance.

The committee regard the evidence as sufficient to remove the former objections, and clearly entitling claimant to the relief sought, and therefore recommend the passage of the bill.

Forty-third Congress, 2d session, Senate report No. 487.

JANUARY 5, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following report, to accompany bill H. R. 580.

The Committee on Pensions, to whom was referred the bill (H. R. 580) granting a pension to Rosalie C. P. Lisle, have had the same under consideration, and submit the following report:

Claimant is the mother of the late Joseph T. Lisle, who was commissioned assistant paymaster in the Navy of the United States on the 11th of June, 1862, and died in the city of New Orleans on the 25th September, 1863, while in service, and of fever contracted while in the line of duty. So much is fully established by the records of the Navy Department.

Claimant alleges dependence upon her deceased son at the date of his death, he being unmarried, and her husband so infirm in health as to be a burden rather than support to the family, and without sufficient income for their maintenance. She further states that her deceased son made to his brother, R. P. Lisle, on entering the service, an allotment of \$50 per month out of his pay for the exclusive use and benefit of the family, and that she had received the funds so contributed, which constituted a large proportion of their means of support.

After the lapse of ten years from the death of her son claimant made application to be placed upon the Navy pension-roll, which application was rejected by the Commissioner, October 26, 1873, on the ground that claimant was not in 1863, and is not in 1873, dependent upon the sailor for support.

The evidence showing dependence of claimant upon her son is very meager, scarcely anything except her own testimony, while the papers on file in the Pension-Office disclose the fact that she was assessed for real property situate in the city of Philadelphia, in 1873, valued at \$15,000, and personal property to the amount of \$500, besides a watch, upon which she paid tax, though the real property is, or was then, under mortgage for about \$10,000.

The records of the Fourth Auditor's Office show that the said Joseph T. Lisle registered an allotment for \$60 per month for twelve months, first payment to be made July, 1863, upon which the sum of \$180 was paid to R. P. Lisle, at Philadelphia. It does not appear for whose benefit or what account the said sums were allotted. There is no evidence that claimant ever received so much money from her deceased son as it is alleged he had provided out of his pay for her support. No letter from him to his brother or other member of the family covering remittances for such object, or any other object, is found among the papers. A note bearing date 18th July, 1863, informs his brother that he had the day before sent allotment and \$5, and adds: "I only wrote then to send love to all and \$5. I am afraid to send more at a time, but will send \$20 every month." The monthly allotment registered was \$60, so that it must have been made for some other purpose than the support of the family; most probably to re-imburse parties who advanced to enable the deceased to procure the needful outfit for the service. Even the \$20 per month promised thereafter is not stated to be for the use of the family, though it is fair to conclude it was so intended. But there is no evidence that anything more than the \$5 was ever forwarded. The son through whom the claimant was to receive the remittances makes no statement whatever of the amount he received from his brother, or how it was employed, nor in respect to the alleged dependence of the family.

The committee conclude that the dependence is not established, and therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. OGLESBY, from the Committee on Indian Affairs, submitted the following

R E P O R T :

The Committee on Indian Affairs, to whom was referred the petition of Albert G. Boone, have had the same under consideration, and report :

The facts set up in the petition show that the claim is for services rendered and money advanced to the United States as a special agent to negotiate a treaty with certain Indian tribes in Colorado Territory, in 1861. It is therefore a claim against the United States for compensation. No question is presented in the petition which can be considered by this committee. Did Mr. Boone perform the services claimed to have been rendered ? Did he advance the money claimed to have been paid by him ? The fact that the services are stated to have been performed in the Indian Territory would not bring the subject before the Committee on Indian Affairs.

It is clearly the case of an ordinary claim against the United States for compensation, and we think should go before the Committee on Claims, and so report.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. CLAYTON submitted the following

REPORT:

[To accompany bill S. 570.]

The Committee on Territories, to whom was referred the bill (S. 570) to organize the Territory of Oklahoma, and for the better protection of the Indian tribes therein, and for other purposes, have had the same under consideration, and beg leave to submit the following report :

The committee recommend that the further consideration of the bill be postponed until the second Monday in December next.

From the information your committee have been able to obtain relating to affairs in the Indian Territory, they are impressed with the belief that the welfare of the Indian tribes, the better administration of justice, and the interests of the United States alike demand additional legislation looking toward the better government of said Territory and the civilization of the Indians.

Before entering upon the consideration of a subject of such magnitude and importance, it seems desirable that the Senate should take some steps to procure the fullest and most reliable information relating to affairs in the said Territory, the sentiment and desires of the lawful inhabitants, and their capacity for self-government under a territorial form.

In furtherance of this idea, your committee would most respectfully recommend that the whole subject be placed in the hands of a special committee of the Senate, with authority to visit the Indian Territory, and with such powers as this body shall think proper to confer upon them.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 1248.]

The Committee on Claims, to whom was referred the petition of Charles B. Phillips, praying to be allowed a share of the avails of the one-third part of the wharf-boat D. G. Fowler, forfeited under the act of Congress of August 6, 1861, having considered the same, submit the following report:

The claim of petitioner rests upon the act of August 6, 1861, (12 Stat., 319.,) which provides:

That if * * * any person or persons, his, her, or their agent, attorney, or employé, shall purchase or acquire, sell or give, any property, of whatsoever kind or description, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person or persons engaged therein; or if any person or persons, being the owner or owners of any such property, shall knowingly use or employ, or consent to the use or employment of the same as aforesaid, all such property is hereby declared to be lawful subject of prize and capture wherever found; and it shall be the duty of the President of the United States to cause the same to be seized, confiscated, and condemned.

SEC. 2. That such prizes and captures shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same may be seized or into which they may be taken and proceedings first instituted.

The same act further provides:

That the Attorney-General, or any district attorney of the United States in which said property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.

In July, 1862, the boat D. G. Fowler was seized in the southern district of Illinois, by the marshal of said district, on the relation of petitioner as informer, which seizure was made on the ground that the boat was used by and with the consent of the owners for insurrectionary purposes, and in violation of the act above quoted. On this information, an attachment was issued against the boat, which was duly executed by the marshal, a libel of information was filed, notice given, and answers filed by the joint owners.

One-third interest in the boat was found to belong to Adam D. Stuart, one-third to Watts, Given & Co., and the remaining third, which belonged to D. G. Fowler, was, on March 2, 1863, declared by the judgment of the court to be forfeited to the United States, pursuant to the act of August 6, 1861, and ordered to be sold. The sale, however, did not take place, for the reason that, before the rendition of the decree, the exi-

gencies of the military service required the use of the boat for military purposes, and that at and before the date of the decree it was in the possession of the Quartermaster's Department, by which it had been received in good condition in January, 1862, with the understanding that the Government was to pay \$500 per month, with the privilege of buying at \$8,000. Petitioner claimed that, as informer, he was entitled to \$2,500 as one-half of the one-third interest which was confiscated as the property of D. G. Fowler.

The case was presented to the Treasury Department, and a decision given that, as no money had come into the Treasury from the proceeding, the Department had no jurisdiction. In view of the fact that the proceedings in court were not pursued to a conclusion, and that, under the act, an informer was not entitled to a share in the proceeds of confiscated property unless the money realized therefrom did reach the Treasury, your committee are inclined to sustain the decision of the Treasury Department; but, taking into consideration all the facts in this case, they think claimant is entitled to something, and have agreed in naming \$1,000 as the amount. Your committee therefore report back the accompanying bill and recommend its passage.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 1249.]

The Committee on Pensions, to whom was referred the petition of Frank Kendrick, late a private of Company A, Fifth Regiment Michigan Volunteer Cavalry, have had the same under consideration, and submit the following report:

Petitioner states that he entered the service on the 18th of August, 1862, and was discharged June 3, 1865; that he was twice wounded, first at the battle of Brandy Station, receiving two gunshot-wounds, 11th of October, 1863, and was in consequence of said wounds in hospital at Washington, D. C., until the 3d of May, 1864, when he rejoined his company, and was again wounded on the 19th of October, 1864, in the engagement at Cedar Creek, and was sent to hospital in Maryland, where he remained until discharged; that while there he had a severe attack of fever, from which he has never recovered; that he applied for and received a pension of \$6 per month for the disability resulting from the wounds received, but being then in hopes of speedy recovery from the effects of fever contracted while in the service, based his application upon the disability caused by the wounds only; and that he is debarred from any increase of pension, under the law and the rules of the Pension-Office, because his disability from the wounds seems not to have increased, while his general health has gradually given way until he is in a confirmed and hopeless decline, quite unable to perform any kind of labor for a subsistence; and asks an increase of his pension to \$15 per month, which he alleges he would now be entitled to provided he had made known his true condition in his first application to the Pension Bureau.

Petitioner's statements were sustained and corroborated by the assistant surgeon of the regiment to which he was attached when wounded, and who has attended him since his discharge; and by four other physicians who have also had him under treatment or examination. They all testify to his total disability, and give it as their opinion and belief that his condition is the direct result of the wounds and sickness which he suffered while in the service. His disease is general debility, with hypertrophy of the heart.

The testimony seems to the committee to warrant the increase of pension to the maximum for total disability; and a bill is herewith reported for his relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Mary Ann Daniel, have had the same under consideration, and submit the following report:

The petitioner is the mother of John Townsend Daniel, late captain of Company D, Thirty-sixth Regiment of New York Volunteers, who was mustered into the service on the 17th day of June, 1861, to serve for two years or during the war, and who was wounded at the battle of Fair Oaks, Va., 31st May, 1862; was sent to general hospital, Annapolis, Md. His wound was in the left knee, and made by a round ounce ball, entering one and a half inches above the tuberosity of the tibia, passing upward and back. The muster-out roll, dated 15th July, 1863, reports him mustered out and honorably discharged, the surgeon certifying his disability at one-half and permanent.

Subsequently Captain Daniel joined Cole's Maryland Cavalry, and was mustered as major March 19, 1864, and was mustered out with field and staff as major, June 28, 1865.

Captain Daniel applied and was admitted to the pension-roll March 18, 1870, at \$10 per month, commencing July 16, 1863, deducting for the time he served as major, from 19th May, 1864, to the 28th June, 1865. He returned to England after his final discharge from the service, and became insane a few years afterward, when his mother, the petitioner, applied, from her home in Yorkshire, England, for a pension for her son in consequence of his loss of health and mind, growing out of his long and arduous service. The pension was allowed, based upon the disability resulting from the wound received at Fair Oaks, Va., and now petitioner asks that the pension may be raised to that provided for the rank of major, which rank her son afterwards held, as before stated, but there is no evidence that the disability from the wound has increased, or that the insanity of the soldier is in any way connected with the wound in the knee, or any disease contracted in the service. The claim is inadmissible, and the committee ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT :

The Committee on Pensions, to whom was referred the petition of John B. Keyes, have had the same under consideration, and submit the following report :

Petitioner enlisted as a private in Company E, Sixteenth Regiment Wisconsin Volunteer Infantry, on the 20th September, 1861, and while serving as sergeant in said company was wounded at Corinth, Miss., October 3, 1862. The wound was in the left arm. He was sent to hospital, and remained under treatment until April, 1863. He was afterward transferred to the Veteran Reserve Corps and made a first lieutenant in the One hundred and twenty-second United States Colored Infantry, 1st October, 1864, to date October 5, 1864, and as captain same regiment, January 10, 1865; was mustered out of the service on the reduction of the Army, February 8, 1866.

Petitioner applied for pension, and was admitted at two-thirds total disability for the rank he held at the date of the wound, \$6 per month.

Dr. Massey, the examining surgeon, at Waterville, Kans., September 26, 1871, reports the condition of petitioner's arm as follows: "He is now suffering from muscular atrophy of flexor muscles of arm. (Biceps and flexor muscles of fore-arm.) He has great difficulty in lifting up the arm, and is unable to obtain his living by manual labor to the extent of two-thirds."

There is no proof showing that the disability has increased since that date, nor does the petitioner allege that it has. But he asks, in consequence of his service for more than four years, and a portion of the time with the rank of captain, that a second-grade captain's pension, to date from the day of his discharge, be granted to him. Inasmuch as the prayer of the petition is wholly inadmissible, and provision made already for the increase of his pension to total when it shall be shown to the Pension-Office that his disability is total, the committee ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of William H. Harding, have considered the same, and submit the following report :

The testimony shows that petitioner was enrolled at New Castle, Pa., in Company A, Seventy-sixth Regiment of Pennsylvania Volunteers, to serve three years, and was mustered into service as a private in said company and regiment, on the 1st of October, 1861, and was discharged November 28, 1864, by reason of expiration of term of service.

Petitioner alleges that he was wounded on the 7th of May, 1864, at the battle of Chester Heights, Virginia, by a piece of shell striking him on the right ankle, dislocating the ankle, and that he was never in any hospital, but continued along with his company until he was discharged, although his ankle was very painful, and since he left the service he has been unable to do any kind of manual labor for a livelihood.

S. E. Ferguson, late captain Company A, Seventy-sixth Regiment Pennsylvania Volunteers, testifies that claimant was wounded at the battle on the Richmond and Petersburg Railroad, Virginia, May 7, 1864, by a piece of shell striking him on the right ankle, fracturing the bones and dislocating his ankle, causing lameness and interfering greatly in the performance of his duty from that time until he was discharged.

This is all the testimony in support of the claim found among the papers, including those on file in the Pension-Office; and it does not appear that Captain Ferguson had personal knowledge of the wound to which he testifies. The affidavit was not in his own handwriting, and compares almost word for word with that of petitioner. Besides, the records furnish no information whatever in regard to the wound, or any disability. No mention is made of lameness or other disability when the petitioner was discharged, though he says that he has never been able to do any kind of manual labor since. It is almost certain that he and his late captain were both in error when they declare petitioner's ankle to have been dislocated, and the bones fractured by the shell, and he at the same time continue on duty, without treatment. The statement is not probable.

The surgeon who examined him when prosecuting his claim before the Commissioner of Pensions, certified that petitioner was one-fourth incapacitated for labor from the cause stated. The committee consider the case destitute of merit, and ask to be discharged.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3686.]

The Committee on Pensions, to whom was referred the bill (H. R. 3686) granting a pension to Nancy Curry, widow of Oliver P. Curry, late a private of Company L, Thirteenth Regiment Kentucky Cavalry, have had the same under consideration, and report as follows:

Claimant alleges that her husband entered the service of the United States, as a private in said company and regiment, on the 2d of September, 1863, at Lebanon, Ky., and died on the 13th of November, 1863, at the same place, of disease contracted in the service and in the line of duty.

She made application for pension, which was denied her on the ground that no record-evidence could be found of the soldier's service. His name, it appears from the certificate of the Adjutant-General United States Army, is not found on the roll of Company L, Thirteenth Regiment Kentucky Cavalry, nor any other company of that or any other regiment. The pay and bounty were suspended at last account on the same ground.

The hospital-records of the Army, on file in the Surgeon-General's Office, show that Oliver P. Curry, private Company L, Thirteenth Regiment Kentucky Cavalry, entered the hospital at Lebanon, Ky., on the 12th November, 1863, for treatment for typhoid fever, and died of that disease on the 13th November, 1863.

Francis Montgomery and W. F. Squires, citizens of the county of Adair, in the State of Kentucky, certified to be reputable citizens, testify that they were members of Company L, Thirteenth Regiment Kentucky Cavalry, which they joined on its original organization at Lebanon, Ky., and mustered into the service of the United States on the 2d September, 1863: that Oliver P. Curry was mustered into the service as a recruit, by Capt. John R. Curry, at the same time and place, for the term of twelve months, and served honestly and faithfully to the 12th November, 1863, when he sickened and died of disease contracted in the service and line of duty; that the said soldier was armed and equipped and put on active duty immediately after his enrollment. They further declare that they were constantly with the said Oliver P. Curry during the said service, and knew that previous to his entering the service he was a man of good, sound physical condition. "That he died a few days before the above-named organization was formally mustered into the above-mentioned service, i. e., the service of the United States, and that his name was dropped from the enrolling-list."

The Commissioner of Pensions had not rejected this claim, but only suspended it to await further testimony in regard to the service, and had just written to the adjutant-general of the State of Kentucky to ascertain whether the regiment was mustered into the State service prior to its muster into the service of the United States, which was not until December 23, 1863, when the papers were withdrawn from the office. No response appears to have been received from the adjutant-general of Kentucky.

There is no evidence before the committee that the soldier was in the service of the United States at all. The committee cannot, therefore, recommend the passage of the bill, but report it back, without prejudice to the claimant, with leave to withdraw the same from the files for further prosecution before the Commissioner of Pensions.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3701.]

The Committee on Pensions, to whom was referred the bill (H. R. 3701) granting a pension to Maria D. C. Bache, have had the same under consideration, and submit the following report :

Claimant seems to have had no grounds upon which to base an application to the Commissioner of Pensions—at least it does not appear that such an application has ever been made. She comes before Congress solely on the long and meritorious services of her late husband and her own inadequacy of means for support. No disability is alleged to have been contracted by deceased while in the service, nor any injury sustained therein, which was the cause, probable or remote, of his death. Colonel and Brevet Brigadier-General Bache had a long, honorable, and successful career in the Army, and acquitted himself with distinction in the branch of the service in which he was commissioned on his entry into the service.

It appears from his military history before the committee that he was a cadet at the Military Academy from July 11, 1814, to July 24, 1818, when he was graduated and promoted in the Army as follows :

Brevet captain, assistant Topographical Engineers, July 24, 1818.

Brevet major, United States Army, July 24, 1828, for faithful services ten years in one grade.

Brevet major, Topographical Engineers, August 1, 1832.

Major, Corps Topographical Engineers, July 7, 1838.

Lieutenant-colonel, Corps Topographical Engineers, August 6, 1861.

Colonel, Corps of Engineers, March 3, 1863.

Brevet brigadier-general United States Army, March 13, 1865, for long, faithful, and meritorious services.

Retired from active service March 7, 1867, under the act of Congress approved July 17, 1862, section 12, having been borne on the Army Register more than forty-five years. Died October 8, 1872, at Philadelphia, Pa., of congestion of the lungs.

The records of the War Department show that Colonel Bache was almost continuously employed, from the date of his promotion into the Topographical Engineers as captain, in 1818, to the period of his retirement from active service, upon the topographical and hydrographical surveys of the coast and borders of the country, for military defenses and to facilitate commerce and navigation, and projects for the improvement of rivers and harbors, for canals and railroads, and upon the construction of light-houses.

While the services of Colonel Bache are admitted to have been valuable to the country, it is submitted that valuable services only can repay the expense to the country of educating persons at the public charge. It must be borne in mind at the same time that the services performed by Colonel Bache were, for the most part, essentially *civil* in their nature. He was exposed to little of the fatigues and none of the casualties of war. More than this, he was subjected to none of the losses of furniture and property, real and personal, by the frequent changes from one military department to another, which is so severe a tax upon most officers in the field, whether in the line or staff, that they find it difficult to accumulate anything. Colonel Bache's position at the seat of Government enabled him to have a settled home during the whole period of his service, and that, too, at the expense of the Government, with pay for the first thirty years of his service much in advance of most officers in the military and naval service of the country. While most young officers, however meritorious, are ordinarily half a life-time reaching a captaincy, claimant's husband was appointed a brevet captain, Topographical Engineers, and assigned to duty as such the same day he was graduated from the National school at West Point. How it has happened that deceased failed to accumulate from his pay and emoluments, during a period of fifty years, amounting in the aggregate to probably over one hundred thousand dollars, a sum sufficient to meet the wants of his family, it would be indelicate in the committee to inquire. It is not only the privilege, however, but perhaps the duty, of the committee to consider whether it is proper to give further encouragement by favorable legislation to a class of claimants upon the bounty of the Government, already numerous, and rapidly increasing, who, upon the most careful consideration, were excluded from the benefits of the pension-laws. These were only intended to provide for soldiers disabled in the service, or the widows and minor children of those dying of wounds or disease contracted in the service and line of duty. Applications by the widows of deceased officers of the Army and Navy, who were neither disabled nor died in the service, nor of wounds or disease contracted therein, have become so frequent as to be almost a matter of course; while the widows of private soldiers and seamen have in no case, so far as the committee can remember, preferred such claims; and it is rather a painful reflection that few, if any, of this class of applicants even pretend to have any case in law, but base their respective claims upon the great merit or long service, or both, of the person on whose account the claim is made; and, more humiliating still, they come chiefly from those whose husbands were in the higher grades of the service; whereas the justice and humanity of the Government is challenged from the opposite end of the line. But indigence and ignorance seldom find influential friends at hand to suggest a relief-bill, and, even if so fortunate, *they* have not the means at command to travel to the seat of Government for the purpose of begging their claims through. Hence they present no bills and get no relief. The committee feel it incumbent upon them to interpose objections to the lengthening of the line of precedents, so rapidly ripening into a rule.

If it is proper to provide for the widow or minor children of any officer of the Army or Navy who never suffered in the service, it is proper to provide for all, and for the widows and orphans of the common soldier and seamen as well, and for the families of deceased civil officers likewise.

Claimant states that her husband died suddenly, leaving her an insufficient support, viz, \$500, her third from his small property, which

she was to receive every quarter; that her three children have aided her, since the death of her husband, according to their means, which are limited. She states that her oldest son is in the *Coast Survey*, and has barely enough for his own family; that her youngest son is a lieutenant in the Army, and is in Arizona fighting Indians, and *needs all his pay*; and that her daughter is the wife of Paymaster A. Bache, who was lately ordered to Nice, and never thinks he has too much for his own use; that it pains her to be a burden upon her children, though they give with cheerful hearts. It is therefore she feels that Congress owes the widow of General Bache a debt of gratitude for his long and faithful services to the country; that her health is wretched; that the physician who has attended her for twelve years has twice given certificates as to her state of health, and pronounces her incurable of neuralgia; that still Mr. Scharit writes to her for a third certificate, accompanied with the doctor's *affidavit*, but that she will not ask for more. Dr. Smith's certificate is in general terms, and rather vague. He states that claimant has been under his professional care for about nine years, during which time she has been continually afflicted with chronic disease of her nervous system, and that in that period she has not been, nor is she now, in a physical condition which would allow of her doing anything regularly toward her own maintenance. This certificate of Dr. Smith's is all the testimony there is in the case. Touching the pecuniary circumstances of claimant, there is nothing except her own statement, which would not be inadmissible were she claiming relief under the law. But the committee accepts her statement as true, and must be allowed to say that her income, though not sufficient to support her in affluence, certainly is adequate to her comfortable support, independent of the care and watchfulness of her children, whose resources, from their positions in the Government, are always available, and quite sufficient to provide for their own wants, and at the same time secure the comfortable maintenance of claimant, even if she had no income whatever.

The committee are unable to see any sufficient ground upon which to rest the claim, and therefore recommend the indefinite postponement of the bill.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3710.]

The Committee on Pensions, to whom was referred the bill (H. R. 3710) granting a pension to Henry C. Mills, have considered the same, and submit the following report:

Henry C. Mills enlisted into the service of the United States at Craftsbury, Vt., on the 23d September, 1863, as a private in Company M, commanded by Capt. Charles R. Fleming, Eleventh Regiment Volunteers, and was honorably discharged, upon surgeon's certificate of disability, on the 14th day of February, 1864.

Claimant alleges that, while in the service and in line of duty, he received the following disability, viz:

That, about the 1st of November, 1863, at Fort Slocum, he was taken sick with diphtheria, and continued sick about two weeks; that after this he was taken sick with typhoid pneumonia, and was sick about four weeks, and before he recovered from these diseases he was taken down with the measles, which left him in a very feeble condition.

Claimant made application to be placed on the invalid-pension roll on the 16th April, 1864, which was rejected by the Commissioner of Pensions May 25, 1864, on the ground that his disability did not originate in the service. The application was renewed in December, 1871, upon testimony deemed sufficient to rebut the record evidence, but the Commissioner again rejected the claim. The certificate of disability for discharge is in the following language:

"I certify that I have carefully examined the said Henry C. Mills, of Capt. C. R. Fleming's company, and find him incapable of performing the duties of a soldier, because of confirmed phthisis pulmonalis. The said Mills, in my opinion, had tubercles in his lungs previous to enlisting. The cause is hereditary. He has buried two sisters recently with the same disease. Disability, total."

The certificate is signed by C. B. Park, surgeon of the regiment, and approved and acted upon by the medical director of the Department of Washington, and General C. C. Augur, in command. No remonstrance or protest on the part of claimant or of any one of his company officers.

A large number of affidavits have been collected and presented, for the purpose of showing that claimant was a sound, healthy man before he entered the service, and that he returned home broken in constitution, and disabled for manual labor, only two of which being the testimony of physicians of the vicinage, well acquainted with claimant and his family.

Daniel Dustin, M. D., testifies that he is a physician and surgeon, practicing his profession in Craftsbury and county of Orleans, in the State of Vermont; that he is well acquainted with Henry C. Mills, of that place, who enlisted in the service of the United States First Regiment Vermont Artillery, and has known him for fifteen years, and has been the family physician of his father for the past twelve years, and that the parents, for people of their age, are not inclined to consumption or lung-disease. He further states that claimant was a sound, able-bodied man, free from consumption and lung-disease up to the time of his enlistment; that on the claimant's return home affiant was called in to see him, when his lungs were found to be very much diseased. He was raising feculent matter, and has continued to do so to the present time, caused by pneumonia, and has treated him from time to time for disease of his lungs, and that at the present time, (December 1871,) the said Henry is a broken-down man.

Dr. S. R. Coney, of the same place, testifies that he is a physician and surgeon, practicing his profession in Craftsbury and vicinity, and is well acquainted with claimant; has known him for fifteen years past, and has doctored in the family more or less during that time. He further states that the parents of claimant are healthy people, not inclined to consumption or disease of the lungs; that claimant was a sound, able-bodied man, so far as I know, free from consumption or lung-disease up to the time of his enlistment.

It will be seen that this testimony does not relieve the case of the objection based upon the surgeon's certificate of disability for discharge. It is stated distinctly in the body of the certificate, after expressing the opinion that claimant's lungs must have been diseased before he entered the service, that the disease is hereditary; that claimant had recently lost two sisters, who died of the same disease. These surgeons and physicians certainly knew how important it was to dispel the impression thus made, if the information upon which the surgeon of the regiment acted was untrue. The presumption is that he obtained the information from claimant himself.

Claimant was only in service two months, and that not active duty, before he had to be sent to hospital, and the surgeon of the regiment certifies that he had at no period been fit for duty. Claimant was a youth under nineteen years when he was enlisted, and had never been treated by either of the physicians who practiced in his father's family, so that they could only judge of his condition by his appearance.

The committee concur in the decision of the Hon. Commissioner of Pensions, that the rebutting testimony presented is insufficient to overcome the force of the record evidence. Therefore the indefinite postponement of the bill is recommended.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2504.]

The Committee on Pensions, to whom was referred the bill (H. R. 2504) granting a pension to Henry B. Burgor, have had the same under consideration, and make the following report:

Claimant enlisted as a private in Company K, Fourth Regiment Minnesota Infantry Volunteers, on the 19th October, 1861, at Fort Snelling, and re-enlisted as a veteran volunteer on the 1st day of January, 1864, in Company K, Fourth Regiment of Minnesota Veteran Infantry Volunteers, and was honorably discharged on the 17th day of July, 1865, at Louisville, Ky., by reason of expiration of term of service.

Claimant represents that while in the service, and in the line of his duty, he was disabled in the following manner: While at Huntsville, Ala., he was taken sick with diarrhea and inflammatory rheumatism, about the 1st of June, 1864; that thereafter he continued with his command to the time of his discharge, but was unable to perform the duties of a soldier, in consequence of the disease contracted as aforesaid; and since his discharge has, from the same cause, been unable to perform manual labor. This statement is sworn to and corroborated by the sworn testimony of George Baird, first lieutenant of claimant's company.

There is no record evidence of disability, though the hospital-records and muster-rolls show that claimant was on hospital duty the greater portion of his second enlistment, which leaves the inference that he was more or less unfit for service in the field. The roll of his company, on file in the Adjutant-General's Office, for May and June, 1862, report him "absent, sick," which is the only record evidence of sickness while in the service, and the disease is not stated, or that he was treated in any hospital or by any surgeon.

Claimant filed his application for pension, alleging the foregoing cause of disability, contracted at *Huntsville, Ala.*; afterwards he, as well as Lieut. George Baird, testifies that the cause of the disability was chronic diarrhea, contracted while on the march from *Raleigh to Richmond*, and was quite sick at the date of discharge in August, 1865, and immediately placed under the care of a physician. The application was rejected by the Commissioner August 17, 1872, under the provisions of the act of July 7, 1864, but would re-open the case upon the production of evidence sufficient to cause a record to be made at the War Department. Such evidence as could be procured was presented to the Adjutant-General, U. S. A., for that purpose, which he sent in a note to

the Hon. J. M. Rusk, chairman Committee on Invalid Pensions of the House of Representatives, under date of June 11, 1874, but it "is not, in the opinion of the Surgeon-General of the Army, sufficient to show that the alleged disability was contracted as claimed."

The testimony submitted to the War Department, in addition to the sworn statements of claimant and the first lieutenant of his company, George Baird, is the certificate and affidavit of Dr. J. N. Whiat, both as examining surgeon and family physician. He reports, upon examination of March 22, 1870, that claimant is one-half incapacitated for obtaining his subsistence by manual labor from chronic diarrhea and rheumatism; which, from the evidence before him, he believes to have been contracted in the service and line of duty. In describing the claimant's condition more particularly, the doctor says he first had chronic diarrhea May, 1865, which entirely disabled him from duty; and second, from rheumatism, May, 1864, which has continued with gradual increase up to this time (March, 1870,) so that the left arm is almost helpless at times; also, a chronic ulceration of both ears, which came upon him at same time with rheumatism, and is very offensive.

The doctor states in his affidavit, dated July 8, 1872, that he was acquainted with claimant at the date and before he entered the service, and knows that he was a strong and healthy man, free from disease; that when he returned home, after his discharge from the service in 1865, deponent was immediately summoned to attend and treat him for a disease then seated upon him; that he was suffering with chronic diarrhea, in a very malignant form; deponent prescribed for and attended him for said disease, during the term of three months, constantly, and has prescribed for him for said disease frequently since that time; and that said Burgor has never entirely recovered from said disease and the effects thereof, but has, ever since his return, been troubled more or less by reason thereof, and at times is unable to perform any physical labor whatever, and is not able at any time to perform the labor of an ordinary person. That he is in consequence thereof unable to support his family; that he is a temperate man, and, except for the effects of said disease, would be capable of giving his family a good support. The doctor in this affidavit says nothing of the rheumatic lameness, or of the disease of the head or ears.

Claimant, on the 14th day of April, 1874, filed another affidavit, in which he states that, sometime in the spring of 1864, lying on the ground, he caught cold in his head; that the regimental surgeon treated him for mumps, and that from that time until the present he has been afflicted with a running sore in his head, which has rendered him deaf; that in May, 1865, he was attacked with diarrhea; that he was sick more or less all the time he remained in the service after the gathering of the sore in his head and the attack of diarrhea; that he was offered a discharge, but refused to accept of it, thinking he would be better; and for the same reason did not, for nearly two years, apply for a pension; that he has a wife and two children depending upon him for support, and is unable to maintain them. Lieut. George Baird makes another affidavit, corroborating the statements of claimant in regard to the attack of cold, brought on by lying on the ground in a severe storm of rain, only under blankets, which caused the trouble in his head. Doctor Whiat also makes another affidavit, dated 14th April, 1874, in which he states that from chronic diarrhea and gathering in the head the claimant is totally disabled for manual labor. And finally a long list of names, neighbors of claimant, appear upon his petition, certifying

to his good character and their full belief in the merits of his claim to a pension.

The testimony is not very consistent or all filed at once. It is doubtful in the minds of the committee whether claimant is suffering from disease contracted in the service, and therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2355.]

The Committee on Pensions, to whom was referred the bill (H. R. 2355) granting a pension to Ann R. Voorhees, widow of the late Captain Philip R. Voorhees, U. S. N., after a full review of the testimony before the committee on a former examination of the case, and a careful consideration of that since filed, submit the following report :

The bill came to the Senate on the 7th of April, 1874, and was considered by the committee and reported to the Senate on May 23, 1874, with the recommendation that it be indefinitely postponed.

Upon the suggestion of additional testimony in the case, a reconsideration of the vote was had, and the bill was again referred to the committee early in the present session, when, by some oversight, only a portion of the papers belonging to the files of the two Houses came into the hands of the committee. They were in two separate packages, and the one sent down with the bill contained only the papers filed *after* the report had been made in May, 1874, viz, a letter addressed by claimant to a member of the committee, covering an affidavit in the nature of a petition for a rehearing in the case, dated 3d June, 1874, and a printed sheet containing sundry testimonials of officers of the Navy touching the character, good conduct, and able seamanship of Captain Voorhees, written at various dates from 1833 to 1856. There was nothing in the declaration indicating that any application had ever been made at the Pension-Office, nor did the documents before the committee seem to warrant that such an application had been made; consequently no inquiry was made at that office for testimony in the case, which is always done when there is notice of such application in the petition, or good reason to suppose one had been made. The member of the committee to whom the case was assigned for examination had forgotten, for the time, that it had previously been examined and reported upon.

In addition to the papers filed on the 3d of June, 1874, the Navy Department furnished Captain Voorhees's naval record, and upon these the committee reported adversely, January 5, 1875; whereupon Philip R. Voorhees, esq., son and agent or attorney of claimant, feeling that the committee had overlooked or disregarded important testimony in the case, and, in ignorance or otherwise of certain facts and the existence of certain public records and documents bearing on the character and naval history of Captain Voorhees, had embodied in their report of January 5, 1875, statements injurious to his memory, which are alleged to

be untrue, appealed to the committee to examine the case once more. The brief and exhibits, as well as the argument read before the committee and filed in the case, designates all the testimony which has been filed in the case, either in the Pension-Office or before any committee of Congress, and much besides which has no bearing whatever upon the merits of the application.

Upon motion, the bill was recommitted for further examination, and all the testimony referred to in the foregoing brief is before the committee; at first only that portion of it filed June 3, 1874, came down with the bill, as on the former reference, but the absent papers being described in claimant's brief, the package was soon found; and the committee now proceed to review so much of the testimony as seems to be pertinent to the claim for pension, and must be excused for declining to investigate and pronounce upon the justice or injustice of the charges made against Captain Voorhees during his service in the Navy, or of the legality or illegality of the proceedings of the court or courts-martial before which he was arraigned, or the correctness or incompleteness of his record as made up in the Navy Department. None of these have any bearing upon the present inquiry.

There being no question as to the service and death of Captain Voorhees, or that the claimant is his widow, the only remaining inquiry relates to the *cause* of the commodore's death. It is in proof that he died of *apoplexy of the lungs*; and it is alleged by claimant that it resulted from the "injury received while in the service, and line of duty, to wit: while serving on board the frigate United States, Commodore Decatur commanding, in pursuit of the enemy, he ruptured a blood-vessel by extraordinary exertions in the use of the speaking-trumpet, while on the deck of said vessel, and from which he never recovered, reducing him to a low state of health, and inducing other diseases, which finally terminated in his death." "This fact," says the claimant, "is known to your memorialist and other members of his family."

Let us see what testimony there is to support the allegation. All that is material on that point now before the committee was before it and examined when the case was first reported to the Senate, May 28, 1874, and it was then deemed insufficient to establish a probable connection between the injury alleged and the disease of which Captain Voorhees died. Claimant testifies to the initial injury as a fact, and to its results, of course, as matter of belief; but she does not state how or at what time the fact of the injury came to her knowledge. There is no record-evidence touching such injury, nor certificate or statement by any surgeon or physician at the time, or since, nor any reference to it by the deceased himself, when speaking afterward of his physical condition. Claimant doubtless obtained the information from her husband after their marriage, which occurred twenty years later. Having no personal knowledge of the alleged injury until the lapse of nearly a generation after, it is only secondary evidence. While the correctness of the statement is not questioned, the committee may be permitted to doubt the competency of claimant to pronounce authoritatively upon the effect resulting from an alleged injury received by her husband in his youth, and only communicated in middle-life, especially when medical experts have been applied to and refused to commit themselves to such a conclusion.

Dr. Dennis Claude, the attending physician upon Captain Voorhees, in his last illness, testifies simply to the fact that the captain died on or about the 26th of February, 1862, of "apoplexy of the lungs." This affidavit was made by the doctor on the 17th of December, 1862, after

claimant's declaration was filed in the Pension-Office, and it is quite significant that he expresses no opinion as to the cause or origin of the disease of which the commodore died. There is not even a suggestion that it originated from *any* injury received, or disease contracted, while in the service. But it will be seen presently that testimony at that date, tracing the fatal sickness of claimant's husband to the injury received by him when a midshipman, would not have strengthened her claim for pension then pending in the Bureau.

The next piece of testimony is the certificate of Doctors John Ridout and A. Claude, civilians, and B. Randall, surgeon United States Army, dated Annapolis, March 23, 1870, as follows: "The undersigned hereby certify that Captain Voorhees, late of the United States Navy, died of congestion of the lungs, with hemorrhage; that he had had several similar previous attacks, and that in our opinion his feeble state of health, of which these were a consequence, had relation, in all probability, to his duties as an officer of the Navy. We further certify that we knew Captain Voorhees for more than twenty years preceding his death, and that Dr. Dennis Claude, now deceased, and Dr. A. Claude, one of the signers of this certificate, were his family physicians." This is not testimony at all, because the law and the regulations require such statements, when made by civilians, to be sworn to; and in this case the Commissioner called the attention of those managing it to the requirement. But it amounts to little if sworn to. They were neighbors and friends of deceased—had known him intimately for more than twenty years; yet it will be observed how guarded they speak touching the origin of the disease of which Captain Voorhees died. They only venture to say that, *in all probability, his feeble state of health, which caused the hemorrhage, of which he finally died, had relation in some way to his duties as an officer of the Navy.* Why, they could hardly have said less of any one in any case, who had been in the service at all, and afterward died, no matter of what disease. Besides, even if the statement committed these physicians to the belief that Captain Voorhees's death resulted from any particular injury received or disease contracted in the service, they have not stated how they came to such knowledge, or what means they had of forming an opinion on the subject. It is not stated that any one of them, not even Dr. Claude, were present when Captain Voorhees died, or at any time during his last illness.

Philip R. Voorhees, son of deceased and of claimant, testifies that within his own personal knowledge his father had had two attacks of hemorrhage, the first some time between the years 1845 and 1848, when his father was suffering great mental agony from disgraceful punishment inflicted upon him, consequent upon two courts-martial by which he was tried in quick succession; and the second some time between 1855 and 1860, when making efforts to be restored to the active list of the Navy. Deponent further states that before he left home, in the early part of 1861, for duty in the blockading squadron, his father was greatly excited over the events of the day; chafed at his inactivity, and longed to take part in the war for the preservation of the Union; and that this renewed excitement, superadded to his father's long-endured mental suffering, due to the gross injustice to which he deemed he had been subjected, largely and directly contributed to the final attack of lung-disease, of which he died.

The foregoing certificates and affidavits, the material portions of which are substantially given, embrace all the testimony which has a favorable bearing upon claimant's application, and, when carefully ex-

amined, it is readily seen how very far short it falls of establishing the allegations upon which the claim is based.

The committee will now invite attention to one or two other items of testimony, not referred to in claimant's brief, but which is important to a clear understanding of the case.

Claimant's original declaration, filed in the Pension-Office on the 25th of November, 1862, states that her late husband entered the United States naval service at New Brunswick, N. J., on the 15th of November, 1809, and while attached to the reserved list and on leave, at his dwelling in Annapolis, died therein while holding the rank above mentioned, (commodore,) on the 26th day of February, 1862, by reason of disease and infirm health contracted in the line of his duty before and in the year 1850, while commanding the United States squadron on the East India station, as will appear by the letter of the fleet-surgeon, Du Barry, dated Macao, August 15, 1850, addressed to Commodore P. F. Voorhees, and a letter of Commodore Voorhees dated Annapolis, February 7, 1851, addressed to Hon. William A. Graham, Secretary of the Navy, both of which letters have been printed and offered in evidence in the defense of Commodore Voorhees before a court of inquiry convened at Washington City, May 11, 1857, and are now herewith exhibited.

The letter of Surgeon Du Barry referred to in the foregoing memorial is as follows:

UNITED STATES HOSPITAL, *Macao, August 15, 1850.*

SIR: I am very sorry to lose you as the commander of this squadron stationed in the East Indies; but I am of the most decided opinion that your health requires you to leave this station, where diseases of the bowels are so prevalent. The complaint you labor under, a *prolapsus ani* of a very aggravated character, alone is sufficient, without other causes, to justify your leaving this climate.

The letter of Commodore Voorhees to Secretary Graham, referred to in claimant's memorial, contains the following passage in regard to his health:

On my arrival in China my health had been considerably impaired by my exposures on the voyages across the oceans. I was suffering, too, from a chronic disease to such an extent as at times to be almost paralyzed. This ill-health, much increased by the cruise with Mr. Balesier under a vertical sun for about four months in the China Seas, where, by reason of the intricacy and danger of the navigation and the defective charts, my exposure was very great, rendered more so from the fact that Commander Gedney was almost totally disabled to discharge any duty. Such was my state of health after his cruise that Fleet-Surgeon Du Barry recommended my leaving that climate. I refer you to a copy of his letter herewith, marked C, dated 15th August last. On my arrival off the Capes so much was I debilitated from the efforts I was compelled to make, from the ignorance of the pilot in running the ship on the shoals, that I fell fainting on deck, and was required to be taken below. I am satisfied any longer stay in China would have required me to go to the hospital on shore and give up duty; and if I had received from the Department orders to remain in China and sent the Plymouth home, I should have been compelled immediately to apply for relief, as utterly unable longer to discharge any duty in that climate.

It is thus seen that claimant alleged in her original petition filed in the Pension-Office as the chief cause of her husband's feeble state of health during the latter years of his life, and finally of his death, disease contracted *before and in the year 1850, while commanding the squadron on the East India station*, referring especially to Surgeon Du Barry's letter to Captain Voorhees, and the letter of the latter to Secretary Graham. No mention is made of the rupture of blood-vessel by the use of the speaking-trumpet, which is now alleged as the cause of the decline and final death of Captain Voorhees.

A short time after claimant's declaration was filed in the Pension-Office, the Commissioner wrote to claimant calling for additional testimony, to which claimant responded as follows:

I received your letter of the 2d instant (December, 1862) pointing out certain defects in the proof to sustain my petition for a pension as widow of the late Philip F. Voorhees, of the Navy of the United States, for which accept my thanks. Your letter I submitted to my brother, who has obtained the inclosed six papers which I hope will supply the required proofs.

It may have some bearing on the subject for me to state here what I have often heard my late husband say of the disease which eventually caused his death. When he was doing duty as midshipman, after an exposed watch and a prolonged use of the speaking-trumpet, he ruptured a blood-vessel, and for the first time his lungs became affected. After his return from the Mediterranean in the Congress frigate, in 1845, he had another hemorrhage, and though he afterward made a long voyage to the East Indies, he never was relieved of that disease. Notwithstanding, he was always ready to serve, and frequently applied for orders, particularly since the war.

The foregoing shows clearly that the injury to the lungs from the use of the speaking-trumpet was an after-thought, and for the first time mentioned in response to suggestions from the Pension-Office for additional testimony to make out the case. It was held even then by claimant to be subordinate and supplemental to the main cause assigned for the commodore's death. For this reason, perhaps, no effort was made to procure testimony tending to show that the death was the result of the injury to the lungs from the use of the speaking-trumpet. It seems pretty clear that claimant, as well as the physicians whose certificates were obtained, and the attorneys in the case, considered the sickness which caused the return of the commodore to the United States from his command of the squadron on the East India station, would alone be regarded as sufficient to account for his ill-health afterward and his final death.

After claimant's letter to the Commissioner of Pensions referring to the injury of her husband's lungs, which she thought might have "some bearing on the subject," the Commissioner of Pensions submitted claimant's petition with the letter last referred to, together with all the evidence filed in the case, to the Bureau of Medicine and Surgery of the Navy Department, asking for such information as the records might furnish, and soliciting the opinion of the chief surgeon upon the statements and testimony, whether or not the disease of which Commodore Voorhees died originated in the line of duty. Doctor W. Whelan replies, under date of January 13, 1863, thus:

Our records had already been unsuccessfully examined in reference to this case; and I regret to say that the data are so meager and so disconnected by long periods of time, that upon them alone it is most difficult to express an opinion favorable to the petitioner. It appears that Mr. Voorhees ruptured a "blood-vessel" while acting as midshipman, a service which extended from 1809 till 1814; that, in 1850, while in command of the East India squadron, Fleet-Surgeon Du Barry recommended the return home of Commodore Voorhees on account of "an aggravated attack of *prolapsus ani*," and that on the 26th July, 1862, the commodore died of "apoplexy of the lungs." These are all the facts submitted, and our records can furnish nothing bearing upon the question.

I regret, therefore, that I cannot, upon this exhibit of facts, say that the disease of which Commodore Voorhees died originated in the line of duty.

It is not stated by the claimant herself, or by her counsel, or any one of the witnesses who have testified in the case, that her pecuniary circumstances are such as to require the aid of the Government, outside of the law. To be sure Mr. Philip R. Voorhees does say that, if granted, the pension will make her declining years more comfortable. But he leaves the committee to infer that whatever comfort it might bring would spring mainly from the partial vindication of the reputation of Commodore Voorhees, which would be the effect of the passage of the act. In the absence of sufficient proof as to the cause of his death to bring the claimant within even the spirit of the law, such a recognition would undoubtedly to a considerable extent answer, in the judgment of Congress, the charges made against this commodore during his life.

time, especially if her income made her independent of such aid; because the act would be a gratuity, and placed solely on the merits and services of her husband; but only in such a contingency. If the claimant were entitled in justice and equity, only needing legislation to cure defects in the proof, then the relief asked would only be a recognition of her rights.

The committee can realize the solicitude felt by the claimant and her family in the result of the pending bill, in the light in which it seems to be regarded, and sympathize with them; but, in the judgment of the committee, the range of inquiry permitted to it under the law and the practice is limited to the designation of persons dependent upon those in the military and naval establishments of the country who have died or been disabled in the service and line of duty; and after patient and careful examination of the testimony in this case, which is substantially the same submitted with the bill in May, 1874, when it was first reported to the Senate, the committee are constrained to make the same report which was then made. The proof is not technically defective only. There is no proof at all showing that Captain Voorhees died of disease contracted or injuries received in the service and in line of duty.

The foundation of the Navy pension-fund does not, in the opinion of the committee, take it out of the rules which apply to other public funds. If it is made up of part net proceeds of certain prizes captured in war, it has been acquired as legitimately as the proceeds of public lands captured in the same way. The fund has not grown up by the relinquishment on the part of officers and seamen of the Navy of portions of certain prizes which they might have retained. The fund is regarded by the committee in precisely the same light as if raised by taxation, and should be administered and applied with the same scrupulous care, because, when exhausted by overdrafts upon it, the deficit must be made up out of the current revenues.

The indefinite postponement of the bill is recommended.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1875.—Ordered to be printed.

Mr. DORSEY submitted the following

REPORT:

[To accompany bill S. 1201.]

The post-office was established, and has been maintained for the transmission of public and private intelligence. In the course of events a new means, the telegraph, has been devised for the transmission of intelligence, and by this means almost all public news and a great portion of the most important private intelligence are transmitted. All other correspondence is regulated by a general law, but this has been left to each State, which cannot properly regulate interstate communication. The power of Congress over the postal service, and to regulate commerce among the States, is undisputed. The celebrated case of *Gibbons vs. Ogden* decided that "commerce undoubtedly is traffic," "but it is something more, it is intercourse."

The bill does not attempt to regulate in any way telegraphic correspondence between offices in the same State, but only where the intercourse is among the several States or with foreign countries. Neither does it attempt to regulate the rates of such telegrams, but only to prescribe that they shall be uniform for like service and without discrimination.

The power to regulate the telegraph has been already exercised by Congress, in an act approved July 24, 1866, by which every telegraph company was authorized to construct, maintain, and operate its lines over and along any of the post-roads of the United States, a law which has been several times enforced by the circuit courts of the United States. The telegraph is the great regulator of commerce, for, by the intelligence it conveys, the prices of all staple articles in any market of the world are regulated. It crosses State lines and pays no regard to national boundaries. No tribunal can regulate the telegraph excepting Congress; and as Congress has never regulated this business, of such vast importance to every interest, it is unregulated by any uniform law.

This correspondence, as we shall show, is subject to the caprices of the various telegraph companies. The sole object for which telegraph companies are incorporated is the transmission of intelligence; but not content with their legitimate sphere of business, they collect, buy, and sell the commercial news of the whole world, and control its transmission and use. For the evidence upon this point reference is made to the case of Mr. Davis, Report of Senate Committee on Post-Offices, No. 242, Forty-third Congress, first session, and also to the Argument of the Counsel of the Western Union Telegraph Company before the House Committee on Appropriations in May, 1874, page 60. Mr. Davis was formerly engaged in collecting news in New York, transmitting it by the lines of the Western Union Telegraph Company, and selling it to his customers.

in Cincinnati. His business was broken up because his news was forestalled by the news from the Commercial Bureau of the Western Union Telegraph Company. Suit was brought against the Western Union Telegraph Company, and a verdict for damages obtained. Since then no one has dared to interfere with this monopoly of the Western Union. The counsel for the Western Union in his argument said: "Mr. Orton became of opinion that it was desirable that the telegraph company or some responsible body should undertake this business solely; accordingly the Commercial News Bureau was organized as a part of the telegraph service." A portion of this business has since been transferred to the Gold and Stock Telegraph Company, a corporation which has substantially the same offices with the Western Union, and the stock of which is largely owned by the Western Union Telegraph Company.

The power which the control of all commercial news gives to its possessor, and the evils which may result from such control, are too plain to require elaboration. The present bill limits the operations of every telegraph company transacting business among the States, to the transmission of telegrams, and prohibits every telegraph company from being interested, directly or indirectly, in the collection, purchase, or sale of commercial or other news.

The dispatches for the press are almost entirely collected by an association of seven papers in New York. This association collects the foreign commercial news and controls it to such an extent that no paper receives reports of the foreign commercial news, except through this association and the Western Union Telegraph Company. It has subordinate associations in every large city of the country, into which no paper can be admitted without the consent of every member of the subordinate association. The dispatches to the press are of two classes, the Associated Press news, and specials. The specials are the private property of the paper or papers that procure them.

By reference to the Senate report before referred to, it will be seen that the associated papers cannot employ any company but the Western Union to transmit their news. The Western Union Telegraph Company also discriminates against papers not belonging to this association by charging a lower price for specials to members of the association than to papers not connected with it; that is, the price for the same dispatch for one hundred words from Washington to New York is 1½ cents per word if the paper is connected with the Associated Press, and at least double that sum per word if it does not belong to it.

The business of collecting, transmitting, and publishing this news has practically become a monopoly. All contracts for its transmission are terminable at the will of the Western Union Telegraph Company, either without notice or at the expiration of thirty days. The Western Union Telegraph Company has exercised its power to terminate these contracts and cut off papers from receiving the Associated Press news in the case of the Alta California of San Francisco. It can discriminate by raising the rate to one and reducing it to another, thus ruining one and favoring the other. This power it exercised in the case of the San Francisco Herald, raising the rates from 7 to 15 cents a word, and reducing them to the Associated Press of California from 2.4 to 1.28 cents a word to each paper. The Associated Press have notified newspapers that they would withhold the associated news from all papers that criticised such dispatches. This power was exercised in the case of the Petersburg Index, as appears more fully by reference to the Argument of the Counsel of the Western Union Telegraph Company, before referred to (pages 54 and 55.)

This discrimination is inequitable and unjust, but is not contrary to any existing law. The present bill is intended simply to prevent such discrimination. It does not undertake to prescribe the rates which any company shall charge, but leaves each one to fix whatever rate it pleases from time to time. It only requires every company to establish uniform rates for like service for dispatches for the press and commercial associations, and publish them in their principal offices.

The lines of the Western Union Telegraph Company extend to almost all parts of the Union. Where they are not found companies belonging to their system occupy the territory, and with these companies they form a close alliance. There are also several competing lines, with which the Western Union Telegraph Company will not make similar arrangements for connection.

This bill is intended to give equal rights to new associations for the collection and sale of news, and to remove the discrimination in favor of specials to members of the Associated Press, and thus to free the press from dependence upon a single telegraph company and one news association.

A short explanation of the method of transmission and delivery of the Associated Press news may be of use in this connection. The dispatches for the South are principally made up at Washington by the agent of the Associated Press and transmitted from thence to New Orleans. Full dispatches are dropped off at almost every station where there is a daily newspaper, as it is cheaper than to transmit a short dispatch for the smaller towns. The Western Associated Press requires fuller dispatches than the South, and they are sent over several different circuits; they have an agent at New York who has access to all the news of the New York Association, and collates from it such parts as he thinks are adapted for the western press and transmits it, south by way of Pittsburgh and Cincinnati, to Memphis, north by Albany and Buffalo, to Chicago and Saint Louis. At Pittsburgh and Chicago reduced dispatches are made up and sent to the smaller towns on the different lines of the railroads running through the States. The circulation of western papers in towns of the same size is larger than that in the South. The charges by the telegraph company are generally based upon the ability of the paper to pay. For the same dispatch the telegraph company may receive \$10 a week from one paper in one city, and \$100 a week from each of four papers in another. It would be impossible for a paper of a very limited circulation to pay as much as one of a large circulation, therefore a uniform price for a given number of words would be inequitable; but it is easy to classify the papers and establish a scale of prices based on the circulation.

In addition to the Associated Press dispatches, the leading papers at the North and West receive specials, and rely more upon these for a large part of their news than upon the Associated Press dispatches. The Washington specials are often sent to two or three papers in as many different places, the expenses divided ratably among the several papers, but their rates, as the evidence shows, are less for papers connected with the association than for others. This is manifestly unjust and inequitable. The statements show that the news furnished to every leading and almost every other daily paper, comes from one source, and its preparation, wherever it is collected, is under the direct supervision of the agent of the seven associated papers in New York. It is inevitable that the views, opinions, and interests of these seven papers should be expressed through this channel, especially, by the full or short reports upon topics which they favor or oppose, and by the

coloring necessarily given by the bias of the writer's mind. These reports, by the rule of the New York Associated Press, cannot be criticised by any paper receiving them.

The present bill provides that the charges that one company shall make to another connecting with it shall not exceed its local rates for similar service, and that no company shall give any preference to one connecting company over another. The committee have attempted to devise a bill which should commend itself to every one, and to enact a general law regulating public and private correspondence by telegraph.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1875.—Ordered to be printed.

Mr. FERRY, of Connecticut, submitted the following

REPORT:

[To accompany bill S. 1261.]

The Committee on Patents, to whom was referred the application of Moses Marshall for the extension of a patent for improvement in knitting-machines, report as follows:

The applicant is the inventor of a valuable improvement in knitting-machines, patented March 15, 1853.

By this invention the manufacture of what are technically known as "ribbed goods," and which had previously been confined to hand-workers on the heavy, cumbersome, English hand-frames, requiring expert operatives, at a cost of from three to four dollars per day, was rendered possible upon compact portable machines, operated by women and children.

The invention is eminently a labor-saving machine, exhibiting unusual mechanical and inventive talent, and adapted to the production of a great variety of articles.

Its utility and value to the public may be readily illustrated by a few facts, clearly shown by the testimony submitted.

Two of the leading articles for the production of which this invention is used are the Shaker socks and Cardigan jackets.

Of the former the annual product is now shown to be about three million six hundred thousand pairs. Formerly a woman could finish four pairs per day, for which she received one dollar per dozen, thus earning thirty-three and one-third cents per day. By the use of this machine she can finish twenty pairs a day, for which she is paid eighty cents per dozen, thereby earning one dollar and thirty-three and one-third cents per day.

Cardigan jackets, made on the English hand-frames, could be produced at the rate of about five per day per man, and cost for labor seven dollars per dozen, or fifty-eight and one-third cents each. By the use of this machine, a woman or girl can produce four dozen per day, at a cost for labor of thirty-seven and a half cents per dozen, or a trifle over three cents each. The annual product of these is about two million four hundred thousand, on which there is a saving of fifty-five cents each.

It will thus be seen that the saving in the cost of production on these two articles alone is over one million three hundred thousand dollars per annum, to say nothing of the vast number of other articles produced by

it. Indeed, so great is the saving effected by this invention, that it may be said to have created a new industry in our country, by which thousands of families are provided with employment at remunerative prices, and while the cost of production has been reduced 20 per cent., the wages earned has been increased 300 per cent.

The testimony shows that the inventor used all the means in his power to introduce his invention into public use, and to realize therefrom; that, after spending his time and means during the original term of his patent, he was nearly a thousand dollars worse off than when he made the invention.

About the time of the renewal he succeeded in arranging with a company, with a capital of \$200,000, to manufacture machines under his patent and pay him a small royalty, he and they supposing that a machine possessing such advantages would be at once adopted for general use. But here again he was doomed to disappointment, owing to an unlooked-for but powerful opposition from the operatives of the English hand-frames. These men, attracted by the growing demand for the "ribbed goods" and the high prices paid in this country at the close of the war, came hither in large numbers. They brought with them the exclusiveness of their "trades union" and the narrow prejudices of their class against labor-saving machines. They refused to work for employers who used the Marshall invention, depreciated its work, and opposed its introduction in every possible way.

The result was that during the seven years of its existence, from 1867 to 1874, the company sunk one-half of its capital, and declared but a single dividend of 5 per cent., the amount paid to Marshall being but \$4,000, a sum totally inadequate as a reasonable remuneration for his invention as scarcely to be worth mentioning.

It, however, appears that, by the persistent efforts of the inventor and the company, they have at last overcome the opposition, and that now the machines are being successfully introduced, so that at last there is an opportunity for the inventor to realize some remuneration for his invention and labor of over twenty years.

It is shown to the satisfaction of the committee that the patent has never been used for speculative purposes, nor to oppress any other interest or the public, but solely as the basis of a legitimate manufacturing business.

Of all the machines thus far made, about one-third have been exported, and the demand is rapidly increasing, thus affording employment to another class of American mechanics. The company, while operating under the patent, has also reduced the price of the machines to the public one-sixth.

No opposition appears to the extension, and your committee are of the opinion that it is but just that the patent should be extended, and that no public interest will be injured thereby.

Your committee, therefore, recommend the passage of the accompanying bill.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 8, 1875.—Ordered to be printed.

Mr. MORTON, from the Committee on Privileges and Elections, submitted the following

REPORT:

The Committee on Privileges and Elections, to which were referred the credentials of P. B. S. Pinchback for a seat in the Senate from the State of Louisiana, have had the same under consideration, and submit the following report :

That the certificate of William Pitt Kellogg, then and now the governor of the State of Louisiana, which certificate is verified by the great seal of the State, shows that on the 17th day of January, 1873, the Hon. P. B. S. Pinchback was elected to a seat in the Senate of the United States for the term of six years, beginning on the 4th March, 1873, by the legislature of Louisiana, in manner and form as prescribed by the act of Congress regulating the elections of Senators of the United States. Upon this certificate the committee are of opinion that Mr. Pinchback has a *prima-facie* title to admission as a member of the Senate, and that whatever objections may exist, if any, as to the manner of his election or as to the legal character of the body by which he was elected, should be inquired into afterward.

The committee, therefore, recommend the adoption of the following resolution:

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years, beginning on the 4th of March, 1873.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed to accompany Report No. 626.

VIEWS OF THE MINORITY.

The undersigned members of the Committee on Privileges and Elections beg leave to submit their views in relation to the admission of P. B. S. Pinchback as a Senator from the State of Louisiana.

The importance that the subject has attained by reason of the complications which now surround it impress it with a gravity not hitherto surpassed by any since the organization of the Government. We feel it to be a proper occasion to give our reasons for the course which our convictions of what is due alike to this body, to the people of Louisiana, and to the whole country, impel us to pursue.

The resolution to be reported by the Committee to the Senate for its consideration is as follows.

Resolved, That P. B. S. Pinchback be admitted as a Senator from the State of Louisiana for the term of six years, beginning on the 4th of March, 1873.

The certificate upon which this resolution is based is as follows :

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, January 15, 1873.

I, William Pitt Kellogg, governor of the State of Louisiana, do hereby certify that on the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-three, Pinckney B. S. Pinchback was duly elected by the general assembly of this State to represent this State in the Senate of the United States for the full term of six years from the fourth day of March, one thousand eight hundred and seventy-three.

Given under my hand and the seal of this State this fifteenth day of January, A. D. one thousand eight hundred and seventy-three, and the Independence of the United States the ninety-seventh.

[SEAL.]

By the governor :

WM. P. KELLOGG.

P. G. DESLONDE,
Secretary of State.

The power of the Senate under section 5, article 1, of the Constitution, to "judge of the election-returns and qualification of its own members" is absolute and unlimited.

The object in this case is to seat P. B. S. Pinchback upon this certificate alone, irrespective of his election, and which in effect for the present excludes any consideration of the election itself.

It may be admitted that the general practice has been to admit the person chosen as a Senator to his seat upon credentials sufficiently authenticated either by the legislature or the governor of the State, subject, of course, to any contest that might be thereafter prosecuted in respect to his right to the seat. The credentials in themselves, it will be conceded, have no substantial value. It is the election, and the election alone, that gives to the person chosen the right to be a Senator.

The certificate of the governor of a State directed to be given, by the act of Congress approved July 25, 1866, upon the election of a Senator, is but the certificate of a fact upon which the official existence of the person chosen depends. It gives to it no force whatever, and without it the election is just as good. It is merely one of the evidences of the election in a solemn form, and to which due respect should always be paid. In the act referred to there is nothing said as to what effect should be given to such a certificate. It has, however, been generally regarded as sufficient in itself to presume a lawful election of the person represented by it to be chosen. It is most certainly appropriate that this act did not define the force of such a certificate. It prescribes a duty that the governor might or might not observe. The Constitution of the United States provides for the election of Senators by the legislatures of the States. This is their absolute right. Congress may regulate the time and manner of choosing Senators, and the power of Congress over the subject is limited to this only. The right of choosing Senators belongs to the legislatures alone, and such election is alone in all cases of inquiry to be determined by its records. The governor is not known in the election; no duty is imposed upon him by the Constitution in respect to it, or in respect to its authentication. The legislature, to which is alone confided the high trust of choosing Senators, can speak through its own organization, its own officers, and its own acts, as its official record will show.

The right of election is sacred; the right of having this election determined by its own record is equally sacred; for it might be that if other independent departments of the Government, as the executive, for example, possessed the right or power of authentication in the election of a Senator, you might impinge upon the full enjoyment of the power of the legislature in the due choosing of Senators. This absolute right to choose we hold should not and does not depend for its efficiency upon the action of the executive or any other officer of the State or Federal Government.

It will be observed that the certificate, such as we now have under consideration, necessarily involves these elements of belief before it can have the force which is now attempted to be given to it by the report of the committee in this case; first, that the facts stated in regard to the election are true; and second, that the person certifying as governor is in fact what he represents himself to be. The efficacy sought to be impressed upon this certificate, in at once admitting the person represented to be chosen to a seat, alone depends upon the latter fact. With this in dispute the efficient power is gone. Investigation is at once inaugurated to settle the disputed point. Inquiry leads to inquiry, and the real life of the certificate is lost in the strife, for it can be readily seen that in a contest as to whether the certificate has any validity, either by reason of the allegation that the person certifying was not in fact the governor, or from any other reason, the State might be left without a Senator, when by reference to the acts of the legislature the records would show a lawful election by a lawful body, and who could deny that a person so chosen, and with such a record, could not be admitted, without regarding at all the contest about the certificate of the governor, or whether he was in fact governor?

We advert to this to show that a contest upon the subject of certificates at all for any legitimate cause destroys their force. It was intended that by their force alone there should be immediate, unobstructed admission to a seat. It must be conceded, in order to give this effect to the certificate before us, that William Pitt Kellogg was at the time the

governor of Louisiana. If he were not the governor, then it is no more than waste-paper. All will admit, we presume, that this has been a subject of dispute at least since the State election which took place on the 4th day of November, A. D. 1872. A constant, earnest, and at times an aggressive protest has been made against Kellogg, as not only not entitled to be the constitutional and rightful governor of Louisiana, but as a notorious usurper, held in the position he has seized without color of right, by means of the armed forces of the United States. Events occurring at the time, and continually since, and some of the most painful character, prove that he does not hold this place practically by any other tenure or power. Whatever else may be said of this notable prominent fact all are well advised that the right of Kellogg to be governor of Louisiana is in good faith denied and resisted in every way possible to a peaceful resistance.

This at once, most naturally, opens up the inquiry as to the certificate itself, and no efficacy is to be ascribed to it until this is satisfactorily settled, for without this it is worthless for any purpose. We apprehend there is no diversity in the committee on this point. The report of the committee insists that Kellogg is the governor of Louisiana, and would proceed to show it by a course of argument and a system of evidence satisfactory to gentlemen uniting in that report. On the contrary, another course of argument, and other evidence equally satisfactory, have brought the undersigned to a very different conclusion. The broad field of inquiry and investigation is therefore opened up, for it must be manifest to an unprejudiced mind that an examination into the fact whether Kellogg was the rightful governor of Louisiana at the time he signed this certificate, must bring us to his pretended election, and, with it, to the election of the body which chose Pinchback. The whole subject relating to the affairs of this State, in connection with the election held on the 4th of November, 1872, for the election of governor and other State officers, and members of the legislature, becomes involved in the very first branch of the inquiry which it is conceded by all must be made and settled before any force can be imparted to the certificate.

Before entering upon this inquiry, we submit most respectfully, putting it in the mildest form, whether this is not an exceptional case from the ordinary one, where it is conceded that there was a rightful governor to sign certificates and where there was a legislature to elect. It must be admitted that no such case was ever before presented to the consideration of the Senate. Notwithstanding it has been the usual practice to admit, in the first instance, persons to a seat upon such certificates, leaving the contest, if any, to be proceeded with thereafter in the usual way, yet the very first question as to the official character of the person pretending to be governor impairs, as we have before said, the wonted efficacy of such certificate; so that when in the examination of this primary question is involved the body that chose Pinchback, and in fact the whole State government of Louisiana, would it be fair, rational, and just to stop short of the substantial merits of the case when all can be settled at once?

It will be admitted, we think, that in such a controversy, opening up both the official character of the governor and the legal validity of the legislature choosing the Senator, we could determine against the validity of the certificate, and at the same time determine the validity of the election upon the record of the legislature and upon its official power of election. Suppose that such certificates should be attacked for fraud, as they could be, could any one say that such attack would involve alone the fraudulent character of the certificate, and not

the rightful issue—the election itself? The attack would involve both, and in involving both, common reason would dictate that we should decide the substantial question. While we could, in such an inquiry, set aside the certificate, we would give to the person rightfully chosen his seat, and all done in the same proceeding. For if our inquiry should be alone confined to the certificate, for whatever cause, we would be exposed to the fallacy of setting it aside and then remitting the case to the governor for other or further certificate of a fact simply, when we could, and it would be our duty, to ascertain the fact ourselves to end the matter.

Therefore we conceive that, even in a technical sense, upon a question submitted as this is, an examination of the whole subject is necessary to come to right conclusions; but when we view it in its broad sense, and as we have it in the light of history, and events daily transpiring, many of which we must or are presumed to know, as legislators and members of this body, we would consider it a gross dereliction of public duty did we confine ourselves to a technical consideration of matter not substantial when in it are involved questions of the greatest moment, and which in their proper solution demand our earnest efforts and soundest judgment.

The facts present the broadest grounds for interposition in the broadest sense to ascertain the real right and settle a question that has already given, and, until rightly settled, will give to the country the greatest concern. The facts cannot be denied that imperatively call for such an interposition; mere parchment titles, mere certificates, sink into significance before the patent and undeniable facts which environ this case. Never before has such a case been made, and it is to be hoped that no such one will ever be made again.

A brief reference to the prominent facts will show how entirely and necessarily the whole case is before us.

A general election was held in the State of Louisiana on the 4th day of November, 1872, for governor and other State officers, for one-half of the senate and for all the members of the house. John McEnery and William Pitt Kellogg were the opposing candidates for governor, the former in politics being the democratic and the latter being the republican candidate. By the official returns made by the regular officers of election to Henry C. Warmoth, then the acknowledged governor of Louisiana, and canvassed and counted by a returning-board claiming to be a legal tribunal for this purpose, McEnery was found to have 9,606 majority over Kellogg; and, in respect to the legislature, according to these same official returns, and with the overholding senators, the senate stood democrats and conservatives, 22; republicans, 11; and there were two vacancies. The house of representatives stood democrats and conservatives, 71; republicans, 39; and there were 7 vacancies, showing a large majority of democrats and conservatives in both branches of the legislature.

Another board of returning-officers, claiming also to be legally constituted, found that Kellogg was elected, and also found that a large majority of republican members were elected to the legislature. It is admitted on all hands that this board had no official returns of the election before it, but that its canvass and count were made up from newspaper reports, the statements of unofficial persons, the political complexion of the parish, and also by counting as votes cast a large number of affidavits of persons who represented in such affidavits that they were from various causes prevented from voting, and the large mass of which, in the end, turned out to be forgeries.

In this condition of things, Governor Warmoth, by his proclamation of the 20th November, 1872, called an extra session of the legislature, to be held on the 9th day of December thence following. The regular session, as provided by the constitution, would begin on the 6th day of January, A. D. 1873. On the night of the 5th day of December, just five days before the meeting of the legislature in extra session, as called to convene by this proclamation, E. H. Durell, a judge of the district court of the United States at New Orleans, passed an order directing Packard, the United States marshal, to take possession of the State-house, and to hold it subject to his further order, and meanwhile to prevent all *unlawful* assemblages therein. Packard, with a detachment of United States troops, seized the State-house, held it for weeks, and refused admission to any member of the legislature not returned by the board of returning-officers headed by John Lynch, and which, in the course of these views, we shall designate as the Lynch board to distinguish it from the other boards. The consequence was that on the day of meeting, the 9th December, no member not returned by the Lynch board was permitted to enter into the State-house. The members meeting there organized. The members, or rather the democratic and conservative portion of them, returned by the board of returning-officers, which we shall distinguish by calling it the De Feriet board, met at the city-hall and organized. Governor Warmoth at once recognized the latter body as the lawful legislature of Louisiana, and their place of meeting as the State-house.

Upon the organization of the body at the State-house, so called—it being the Mechanics' Institute hall, improvised into a State-house, there being no State house for the purpose provided by the State since the removal of the capital to New Orleans—consisting of republicans, it at once passed articles of impeachment against Warmoth, and, by virtue thereof, P. B. S. Pinchback, then lieutenant governor, took upon himself the office of governor, and claimed to act as such. Kellogg, who was a Senator in Congress at the time he became a candidate for governor, resigned his seat in the Senate, by reason of which a vacancy took place in this body from that State. Each of these bodies thus organized elected a Senator to fill this vacancy. One, the McEnery body, as we shall designate it, elected Mr. McMillan, and the other, the Kellogg body, elected Mr. Ray for the unexpired term. Each presented their credentials regularly signed and attested, Mr. McMillan by Governor Warmoth, and Mr. Ray by Acting Governor Pinchback, each claiming to be the lawful governor of Louisiana. The extra session closed, and on the 6th day of January, 1873, the regular session began. Both bodies met at the same places, and both organized. The one, democratic, declared John McEnery duly elected, and the other, republican, declared William P. Kellogg duly elected. Both qualified, and both proclaimed themselves to be the governor of Louisiana.

On Tuesday, the 15th day of January, the day fixed for electing a Senator for the long term, commencing on the 4th day of March, 1873, the one body, the democratic, elected W. L. McMillan, and the other, the republican, P. B. S. Pinchback. Both came here with credentials, those of McMillan signed by McEnery, and those of Pinchback signed by Kellogg, each representing himself to be governor, and in all other respects are in due form, and attested by the seal, or the pretended seal, of the State. The certificates of both were presented in March, 1873, and ultimately referred to the Committee on Privileges and Elections.

We have, therefore, presented to our consideration by the certificates before us, the fact of two rival bodies and of two rival governors in the

State of Louisiana—in fact of two rival governments, each claiming to be the rightful government of Louisiana, each body claiming to be the lawful legislature of Louisiana, and each sending rival Senators for a seat in this body, and each coming accredited with his certificate of election from the respective governors, each claiming to be the rightful governor of Louisiana. It is due alike to the people of Louisiana and to the dignity and constitution of this body, that we use all the means in our power for a fair and just ascertainment of the rights of each to send a representative here. It must be acknowledged that, as presented, it is an exceedingly delicate question, and should be approached with all the spirit of fairness and candor of which the human judgment is capable. It is the first time in our history in which any such case has ever been presented to us, and it grows out of the unsettled condition of society in that State.

The question involves an inquiry into the fact as to which of two governors and of two bodies constitute the rightful governor and the rightful legislature of the State. And, indeed, further, in the progress of such an inquiry, whether there is any legislature at all qualified to elect a representative in this body to legislate, not only upon matters affecting the affairs of Louisiana but of the whole country.

To our minds such a development of facts as we have, both historically and by the investigations and reports of both Houses of Congress made upon the subject-matter, that we should be confined to the inquiry only of ascertaining whether the certificate of the governor was surreptitious, or whether the person certifying was, in truth, the governor he represents himself to be, and not permitted to inquire whether the governor and the body electing (of which he is certifying) are both surreptitious, is beyond our comprehension, and where, especially as in this case, the examination of one is the examination of both; one is incidental to the other, and the facts upon which either claim their right of action are interwoven with the facts that apply to both—the one an examination of the certificate of what was done, and the other of the fact of what was done.

With these views, we beg leave to examine the whole case and to submit the conclusions to which we have arrived.

In the first place, however, we propose to confine ourselves to the consideration of the case as presented by the committee upon the certificate alone of Kellogg. It will be observed that the report of the committee puts the question in definite terms. It declares Kellogg "*then and now* the governor of Louisiana." It asserts what is denied, and presents as the sole question to be determined whether Kellogg was the governor of Louisiana at the time he signed this certificate; and this being so, we are then estopped from going behind it in the first instance by the usage of the Senate.

Thus confined in this stage of our inquiry to this single question, it becomes important for us to know all the facts and circumstances upon which Kellogg must rely in order to constitute him the rightful governor of Louisiana, and to this point we shall now direct our attention.

When we speak of the governor of Louisiana, of course we must mean only that he is the governor according to the constitution and laws of that State. By the forty-eighth article, title 3, of the constitution of Louisiana, it is provided that the supreme executive power shall be vested in a governor, who is to hold his office for four years, to be elected by the people. The person having the greatest number of votes shall be declared duly elected. In case of a tie between two or more candi-

dates, one of them shall be immediately chosen governor by the joint vote of the members of the general assembly.

No one, therefore, can be the constitutional governor of that State unless he be chosen in the manner prescribed.

We should, however, always be careful when the question, so grave in its nature, is raised, as in this case, to consider all the direct as well as the indirect facts and circumstances proving or tending to prove the real issue.

And here it is important to remember, in order to avoid misconception, that in determining this question in this or any similar case, we are confined solely to powers conferred upon this body to judge of the elections, returns, and qualifications of its *own* members. Within this scope we possess all power, and our judgment is binding upon all, and cannot be brought into question by any person or tribunal whatever. But beyond this we cannot go; our acts can only have reference to one thing—whether the person chosen is entitled to be a member. Our decision is only binding when applied to this one particular fact. Our decision may be right or it may be wrong—that is for us to bear; but it does not bind other persons or other departments of the Federal or State governments, having other and different relations with the governor or legislature, or both, from contesting or confirming the rights of either or both to legal existence. Our decision here may be cited to show what we did, but it can be used only as an illustration of what others thought and did, and not as binding upon them except, as we have before stated, upon the fact of senatorship, in which our jurisdiction is complete and final and binding upon all. The decision of this body upon this question, be it what it may, does not establish or disestablish the Kellogg government, so as to affect or conclude the rights of others not involved in the election of Senator itself. The people of Louisiana may consider themselves outraged by our action in receiving a Senator not elected by what they may hold to be the rightful legislature; nevertheless they are bound by it, because we have the right to judge and determine; but will any one pretend to say that the separate action of this body upon this single question, committed exclusively to its jurisdiction, should bind and conclude any other person and any other department, either State or Federal, in their own separate and distinct relations with this legislature, or as to any rights they may have as against or instead of it? Surely not! Therefore our decision does not vest a single right or confer a single power upon any other human being save the person upon which we have passed and admitted to membership upon this floor.

But to recur to the question. If, in the course of the investigation, from all the facts drawn from all the sources to which we have referred, we conclude that the pretended governor is a mere usurper, then his acts are void and avail nothing. Persons hold office or place under three different tenures—first, *de jure*; second, *de facto*; and third, as a usurper—the only three modes, we believe, known to the law; and by one or the other of these tenures does the person exercise the office or place that he holds.

The first is clothed with all the powers that right, combined with possession, can give. The second is only clothed with the powers possession can give, that possession being obtained under a color of right; and these powers are limited to certain well-defined acts. The third refers to a person undertaking to hold office without any color of right; he is a mere usurper, whose acts are void.

The distinguishing differences between officers *de jure* and *de facto*

and a mere usurper are well laid down in the books in the earlier days, and the same are observed to this day. In a leading case, decided so far back as 1738, the general principles relating to officers *de jure* and *de facto* were well defined. In this case one Goldwire, "under pretense and color of being elected mayor of Christ Church, in the county of Southampton," was presented unto William Willis, steward of the court leet, and was there sworn into the office of mayor, and, in fact, exercised the office till — day of —, 1736, and that being in the exercise of said office, and under "pretense of being elected, and sworn into the same, he issued a summons to the several burgesses of the corporation to meet, &c.," and at such meeting he nominated the defendant, Lisle, as one of the burgesses, and the question was whether, when he made said nomination, he was mayor *de facto*, for it was found that he had never been elected, and, if mayor *de facto*, whether he had the power to make the appointment. It was held by the court that Goldwire was not so much as a mayor *de facto*; for in order to constitute a mayor *de facto*, it is necessary that there be some form or color of an election, but without this, the taking the title and regalia of the office, and the acting and being sworn in as mayor are not sufficient. Now, here it appears that Goldwire was never elected in fact; and though it be stated that he was sworn at the leet, it does not appear (as it ought) that this was agreeable to the constitution of the borough. And it is not material that he acted as mayor, as it is found that a *quo warranto* was recently prosecuted against him, pending which the present election was made, and that he was thereupon adjudged to be a *usurper*." (Andrews' Reports, *Henry vs. Lisle*, 173.) The distinctions then made are continued to this day, and are as clearly defined:

An officer *de facto* is one who exercises the duties of an office under color of an appointment or election to that office. He differs, on the one hand, from a mere usurper of an office, who undertakes to act as an officer without any color of *right*, and on the other from an officer *de jure*, who is in all respects legally appointed and qualified to exercise the office. These distinctions are very obvious, and have always been recognized. (17 Connecticut, *Plymouth vs. Painter*, 588; 7 Johnson, *People vs. Collins*, 549; 2 Kent.)

It is claimed by some that though it be a question whether Kellogg be a governor *de jure*, yet he is a governor *de facto*, and as such his certificate of the election of Pinchback is to be recognized as equally binding upon us as if he were governor *de jure*.

Holding, as we do, that he is neither the governor *de jure* nor *de facto*, but a mere usurper, and a usurper not keeping himself in position by his own unaided local power, but by the aid of armed forces of a foreign power—in its true relations to this case as much a foreign power as that of Great Britain could be—we desire, briefly, to examine this phase of the subject.

Keeping in view the rulings we have cited, is Kellogg so much as a governor *de facto*? In disposing of this we dispose of his character as governor *de jure*.

As we have already noticed, the constitution of Louisiana provides that the governor shall be elected by the people. To be such *de facto*, he must be in by color of an election. If he has no color of an election, he is nothing but a usurper, "who is one undertaking to act without a color of *right*." Two propositions are to be here considered, in order to arrive at correct conclusions.

1. Was Kellogg elected by a majority of the votes of the people at the election held on the 4th day of November, 1872?

2. If he was not, then had he such a color of an election as to constitute him governor *de facto*?

This brings us to the wider domain of fact which at every step has marked this controversy from its inception in 1872 to the present period. In the direct examination of the matter, all the facts that may tend to a correct result should be considered. We have a great variety of facts and circumstances, some historical in their character, some which we are obliged to know or are assumed to know from our constitutional relations to the State, her people, her government, her officials, whether judicial, ministerial, executive, or political, and those which we have gathered ourselves through committees of this body in the investigation had by resolution of this body passed on 16th January, 1873, and which is as follows: "*Resolved*, That the Committee on Privileges and Elections be instructed to inquire and report to the Senate whether there is any existing State government in Louisiana, and how, and by whom, it is constituted;" and to which committee were also referred the certificates of John Ray and W. L. McMillan, both claiming the seat in this body supposed to have been made vacant by the resignation of William Pitt Kellogg.

This committee, composed of Messrs. Morton, Carpenter, Logan, Anthony, Trumbull, Alcorn, and Hill, made a diligent and laborious investigation of all the matters connected with both questions, and made an elaborate report to the Senate, accompanied by a large amount of testimony. It is Senate Report No. 457, Forty-second Congress, third session. From all the evidence, then, and which covers and exhausts the whole subject, was Kellogg in fact elected by the people of Louisiana the governor of that State? The testimony shows that the election was held on the 4th day of November, 1872, and that it was held under the election laws of that State, approved March 16, 1870, and that official returns were made of that election to the governor of the State by the supervisors of registration, as required by the fifty-third section of that act.

The fifty-fourth section of the same act provides for a returning board, before whom all returns are to be laid by the governor, the governor being one of the board by virtue of his office, and this board is to canvass and compile these returns of elections and make returns of the persons elected to the secretary of state. Henry C. Warmoth was then governor of the State of Louisiana, having been elected in 1868, and who, by article 53, title 3, of the constitution, was to hold his office till the second Monday of January thence following the election held on the 4th day of November, 1872, and until the Monday next succeeding the day that his successor shall have been declared as duly elected, and shall have taken the oath of office as required by the constitution. It is not our purpose just now to refer to the difficulties occurring in the organization of the board of returning-officers; upon another branch of the subject we shall advert to it; but it is sufficient for our present purpose to ascertain that the election was held and the official returns were made of that election, and that they were counted and the result ascertained.

The official returns were made to the governor by the supervisors, and were by him laid before a board of returning-officers, claiming to be legally constituted for this election. It may be necessary here to state that by the election law of 1870 the governor, lieutenant-governor, the secretary of state, one John Lynch, and T. C. Anderson, or a majority of them, were made the returning-officers for all elections in the State.

The governor had in his possession the official returns of the election, but by reason of the changes in the board through disqualifications and from other causes, and through which two boards were organized, each

claiming to be the legal one, and both appealing to the courts of the State to settle their respective rights, he did not lay the official returns before either board; but, in view of the condition of things, and to get rid of the difficulties of the situation, and to get rid of both boards, he approved the law passed at the preceding session of the legislature providing the mode of conducting elections, and which repealed entirely and absolutely the election law of 1870. He approved this act November 20, 1872, and it provided specially for the selection of a board of returning-officers, to be made by the senate. This at once put out of official existence the contending members of the rival boards. The senate not being in session, Warmoth then, by virtue of the power claimed by him under the constitution to fill vacancies, appointed De Feriet, Wiltz, Isabelle, Austin, and Taylor, who took the oath of office, and before whom, on the 4th day of December, 1872, he laid the official returns, and they proceeded to canvass and compile them for senators and members of the house of representatives, and declared the results, and which were then officially promulgated by Governor Warmoth. This return gave the results in both branches of the legislature as we have already stated them. On the 20th day of November, 1872, the day on which he signed the act abolishing the old board, he issued his proclamation calling an extra session of the legislature, to convene on the 9th of December.

The majority of the members of both branches of the legislature declared to be elected by this returning-board met on the 9th December at the city-hall in New Orleans, and organized both houses. They were recognized by Governor Warmoth as the legal legislature of Louisiana. After organization, the senate proceeded to elect five persons, taken from all political parties, to constitute the board of returning-officers for elections, as required by section 2 of the act of November 20, 1872, and accordingly elected Mitchel, Forman, Thomas, Hunsaker, and Todd as such returning-officers. The official returns were laid before this board by the secretary of the De Feriet board, which had just before completed a canvass of them for members of the legislature, as we have stated, and they were all again canvassed by this new board, and with the following result:

McEnery	66, 767
Kellogg	54, 479

Majority for McEnery	11, 288
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The witness, Mr. Forman, a member of this board, brought with him the official returns and had them before the committee of the Senate, then investigating the case, and in all his testimony gave a satisfactory account of the manner in which the canvass was made. His evidence will be found, together with the official vote for governor, in the report made by Mr. Carpenter, and accompanying testimony on pages 75 to 83, inclusive. There was no pretense that these were not the official returns; they were before the committee. There was no effort made to invalidate them in any way. Every opportunity was given. The same section of the law requiring the supervisor of registration to send the voting list and returns to the governor, also required him to make triplicates and retain one. No effort was made by the production of any duplicates to impair their correctness. It must be conceded that they were the official results, and that according to them McEnery was elected. There can be no other conclusion. It must be conceded, too, that Kellogg was not elected. Whatever right to the position as

governor Kellogg may have, he certainly has none by the regular official returns of the votes of the people, as cast and returned under the constitution and laws of Louisiana.

Then, having no right whatever by virtue of the election itself, has he any right by *color* of an election? And this brings us to the second proposition. We can well conceive that this right by *color* of an election is somewhat indefinite in meaning, and subject to many deductions and inferences from a given statement of facts, as in this case. Some may ascribe a more rigid construction as to what may be meant by a colorable right to a place than others. But this must be determined upon all the facts and circumstances as they are presented, and we must gather from them whether there is in good faith any *colorable* right to hold the place; otherwise it is a fraud and a usurpation. There must be some reasonable meaning attached to the words "colorable right," or "under color of an election." Why use them in order to create an officer *de facto*, and to distinguish him from a usurper, unless they do mean something or have some force?

We hold that, giving the weakest possible force to these words, there is nothing in this whole case that can give a pretense to the color of an election. It has been shown that Kellogg was not elected. Then, what is there to impress him with the color of an election? Nothing whatever. A more bold, shameless, reckless usurpation is not found in history.

He stands upon one thing, and upon one thing alone, and that is the declaration that if the people had voted, and voted their sentiments, he would have been elected. If this can give a color to a right, and dignify him with official power, even for the most limited purposes, then he is endowed with it. He pretends to hold his election by virtue of a canvass under a board claiming to be returning-officers—consisting of Lynch and Herron for a time, then Bovee, Longstreet, and Hawkins—in which they gave some 17,000 majority to Kellogg.

The objections to this canvass are, first, that these gentlemen had not a tittle of authority to canvass, the law under which they pretended to act being absolutely repealed, and therefore they possessed no power whatever to do so.

And next, that there was not an official return before them to canvass; but it is admitted by Lynch, in his testimony taken by the committee, found on page 155, that there were no returns before them, and that they obtained their information as to the results of the election from all kinds of sources, and from one particularly—the known political divisions of the voters of a county.

Comment upon such a canvass is unnecessary. The machinery of elections by means of which public sentiment is definitely ascertained, and our governments, both Federal and State, are carried on, is an essential element in the American system. There is no substitute for it, and without it there is no order, government, or law. It must be established for the public good, and it must be supported when established for the public safety. The collected will of the people is only known through it. The voter that does not resort to it for the expression of his will from any cause cannot be heard above it or outside of it. True, an election may be set aside for fraud, intimidation, or other pregnant cause, but still the collected will of the people must be expressed through its machinery. A citizen not voting is as dead in law as if he were in fact dead so far as concerns the affirmative expression of his political will. The question is not what the voter may have done had he voted or offered to vote, but what did he do by his vote.

But to characterize properly the power of this board to make this

canvass, and the supreme folly of the canvass itself, it will only be necessary to refer to the report from the Committee on Privileges and Elections, signed by Messrs. Carpenter, Logan, Anthony, and Alcorn, and to which we have already referred. The following extracts are to be found on pages 26, 27, and 28 :

One of two things is certain, the governor's approval of the new election law on the 20th of November gave it effect on that day, or it did not.

Assuming that the approval on that day was regular, the new law absolutely repealed all the laws under which the Warmoth board and the Lynch board were pretending to act, and, of course, abolished both boards without regard to the question which was the legal one. All that had been done in the election of November, 1872, in pursuance of the old laws, that is, the registration, voting, and returns, was as valid after the act of November 20 as before. If the canvass had been made by the proper board under the old law, and in all things completed, the rights of parties, based upon that canvass would not have been affected by the repeal of the laws. But the act of November 20, taking effect after the returns were made and before they were canvassed, transferred the duty of canvassing to the new board created by the act.

Again :

On the 6th of December, 1872, the Lynch board—Bovee, (who was then acting as secretary of state in place of Herron,) Lynch, Longstreet, and Hawkins—pretended to have canvassed the returns of the election, and certified to the secretary of state that Kellogg had been elected governor; Antoine, lieutenant-governor; Clinton, auditor; Field, attorney-general; Brown, superintendent of education; and Deslondes, secretary of state; and also certified to a list of persons whom they had determined to be elected to the legislature.

There is nothing in all the comedy of blunders and frauds under consideration more indefensible than the pretended canvass of this board. The following are some of the objections to the validity of their proceedings :

1. The board had been abolished by the act of November 20.
2. The board was under valid and existing injunctions restraining it from acting at all, and an injunction in the Armstead case restraining it from making any canvass not based upon the official returns of the election.
3. Conceding the board was in existence, and had full authority to canvass the returns, it had no returns to canvass.

The returns from the parishes had been made, under the law of 1870, to the governor, and not one of them was before the Lynch board.

It was testified before your committee by Mr. Bovee himself, who participated in this canvass by the Lynch board, that they were determined to have a republican legislature, and made their canvass to that end. The testimony abundantly establishes the fraudulent character of their canvass. In some cases they had what were supposed to be copies of the original returns, in other cases they had nothing but newspaper statements, and in other cases, where they had nothing whatever to act upon, they made an estimate based upon their knowledge of the political complexion of the parish, of what the vote ought to have been. They also counted a large number of affidavits purporting to be sworn to by voters who had been wrongfully denied registration or the right to vote, many of which affidavits they must have known to be forgeries. It was testified by one witness that he forged over a thousand affidavits, and delivered them to the Lynch board while it was in session. It is quite unnecessary to waste time in considering this part of the case, for no person can examine the testimony ever so cursorily without seeing that this pretended canvass had no semblance of integrity.

It may be well enough to observe here that, besides the distinguished gentlemen who united in this report, Judge Trumbull and Mr. Hill, who were members of the committee, in this respect concurred with the report, whilst differing upon some other things, and in conclusions upon the whole case. The ability of all these gentlemen in the performance of the grave duty assigned to them is unquestioned; their labor and attention about it known and appreciated; and their party affiliations must stamp their detail of facts with freedom from all political bias in favor of McEnery and his government. Can anything more be added to show that there is not a pretence by which Kellogg can manufacture a colorable title to an election in fact?

It must be remembered that we are not in this controversy obliged to

show that Mr. McEnery was elected in fact. Our purposes are answered when we show that Kellogg is not elected, or that he has no colorable title to an election.

In simple justice to the gentlemen of the committee making the report to which I have referred, whilst thus admitting that Kellogg was not elected, they come to the conclusion that, from irregularities, intimidations, and frauds, and other causes, no fair election had been held, and that it should be annulled and a new one ordered by Congress, and to be conducted under the auspices of the General Government. In order that there may be no misconception, we give the following extract from their report, which will be found on pages 44 and 45 :

The testimony shows that leading and sagacious politicians of the State, who were acting with Warmoth, entertained the opinion before the election that Warmoth's control of the election-machinery was equivalent to 20,000 votes; and we are satisfied by the testimony that this opinion was well founded. We believe that, had registration been accessible to all, and polling-places been properly established, the result of the election would have been entirely different. And although we cannot approve of such a canvass as that made by the Lynch board, who seem to have acted upon the principle of "fighting the devil with fire," and circumventing fraud by fraud, and cannot say that Kellogg's government was elected, nevertheless we believe that Kellogg's government was defeated and the popular voice reversed by the fraudulent manipulation of the election.

If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State; and McMillen, if regularly elected by that legislature, should be seated in the Senate in place of Kellogg. But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.

In all this it will be observed that, whilst they condemn the manner of the election of McEnery, they take care to affirm again that Kellogg was not elected.

Then, so far as Kellogg is concerned, there is nothing to show that he had the slightest right, either by an election or the color of an election, to hold this office. He must therefore be regarded as a usurper; for in no other character could he hold the place, if not in that of governor *de jure* or *de facto*.

The principles are well and plainly defined in the case of Plymouth vs. Painter, 17 Conn., already quoted, in respect to the acts of persons holding place under one or the other of these modes. The following is from page 593 :

The acts of a mere usurper of an office, without any color of title, are undoubtedly wholly void, both as to individuals and the public. But where there is a color of a lawful title, the doings of an officer, as it respects third persons and the public, must be respected until he is ousted on a *quo warranto*, which is the appropriate proceeding to try the validity of a title to an office, and in which it would be necessary for him to show a complete title in all respects; although in a suit against a person for acts which he would have an authority to do only as an officer, he must, in order to make out a justification, show that he is an officer *de jure*; because the title to the office being directly drawn in question, in a suit to which he is a party, may be regularly decided. So where he sues for fees, or sets up a title to property by virtue of his office, he must show himself to be an officer *de jure*.

It is here laid down, first, that the acts of a usurper are void.

Secondly, that the acts of an officer in, by a color of title—that is, an officer *de facto*, where the rights of third persons or the public are concerned—are to be respected.

Thirdly, that, where he is directly concerned, he must show himself to be an officer *de jure* whenever the direct issue is made, either as to title, or fees, or as a trespasser, or otherwise.

If Kellogg, then, be a usurper, the certificate relied upon in this case has no value for any purpose. But let us assume, for the sake of the

argument, that Kellogg was governor *de facto*; that he was in by color of an election, and by color of an election only, and not by an election itself; with such knowledge upon our part, with the known fact, besides, that his right to the place is denied and contested, that there is a rival governor, in fact a rival government, we should proceed with great caution in giving such efficacy to his simple certificate. True, the third section of the act of Congress of 1866, making provision for the election of Senators, makes it the duty of the governor to certify the election to the President of the Senate; it still stops short of prescribing the force of such a certificate. No doubt Congress intended that ordinarily it should be regarded as sufficient for admission to a seat, but it must be manifest that this certificate is not the real credentials of a Senator elect, but intended originally, we may presume, as a substitute for it. The real credentials of the election is a copy of the record of the election itself, properly certified by the officers of the body electing; for Congress has no right to impose this duty upon the governor, and that neither it nor the person elected can compel the governor to issue any such certificate.

There must be design in not presenting a certified copy of the record of election by the legislature instead of depending alone upon this certificate of the governor, when it was well known that every step in the progress of this case would be contested. The declaration in the report submitted by the committee that Kellogg was *then* and *now* the governor of Louisiana defines the spirit of the whole proceeding; and that is that it is more of an object to get Kellogg recognized in some way as governor by this body than the admission of Pinchback to a seat in it.

Therefore should we be more careful still how we undertake, in giving ostensible credence alone to a certificate, to pass upon a higher matter—the legal character of the person giving it. Why not, in such an acknowledged condition of things, recur to his credentials, which the record of the election or a copy of it can make? But, that produced, it is too apparent that the contest would be transferred from the governor to the legislature; the legislature is out of being, and therefore the fact of an election by it can only be inquired into; but the governor is still living in the place in which he was put, and still kept by an armed force, and to be kept there if his acts are to be respected or sanctioned by us. How shall we close our eyes to the facts staring us in the face? We again beg leave to repeat that with the assumption that Kellogg is at best but a governor *de facto*, with a rival governor claiming the right, and with the acknowledged power to exercise it in the absence of the troops of the United States, should we not be careful, if we can in any way, abstain from determining questions of the present, which concern alone the present, and which should be determined in a different way and by all branches of the Government, if to be determined at all by it. The election of Pinchback does not concern the present; the body electing him is *functus officio*. He must stand or fall by the action of that body. Let us go back to that, and upon the acts and legal validity of that body determine the right to a seat. We say again that the passage of the resolution decides only one thing, the right of membership, and binds no one to anything besides; but the fact that in doing this we have acknowledged the legal validity of Kellogg's official character may influence others or justify others in doing things, to the infinite injustice of the people of Louisiana, and to the persons there claiming to be officers by virtue of a rightful election.

Again, we well understand the principles which limit and qualify the powers of an officer *de facto*. His acts are scanned and judged; he can do only those that are to be considered as necessary to be done;

indeed, so confined in this respect that it was held, in the case of the King *vs.* Lisle, that the proper question in a case would be "whether the person be an officer *de facto* as to the particular purpose under consideration;" he can do nothing for himself; he cannot set up title by virtue of his office; he cannot sue for his fees or salary; he cannot justify in a trespass; he can do nothing that may bring in issue his right to hold the office without showing that *de jure* right for the exercise of it. As a judge *de facto*, his judgment in a litigation between third parties would be good; a sale of property under such a judgment would be good; to pass title, and for the reason that third parties are not supposed to be able to inquire into the rights of one holding and exercising the duties of the office, and must therefore act upon what appears to be the right. But a sheriff *de facto* seizing and selling the property under that or any other judgment in a suit against him for the seizure by the owner or possessor of the property, he must for his defense show that he held his office *de jure*, for this concerns himself only, and he should know whether he was in right an officer.

Shorn of the general and enlarged powers of an officer *de jure* by the plainest principles of law, limited and circumscribed by rules founded in reason and having the sanction of ages, shall we be disposed to give to the act of such an officer—governor *de facto*—if even he be such, that full and unqualified effect in this case with the extraordinary circumstances surrounding it, as if he were an officer *de jure*, when that act, too, bears directly upon the constitution of this body, which we are bound to guard, and upon the right of a State to have its true representatives upon this floor. In regard to the constitution of this body, the direct issue is made; this pretended governor represents himself to be the governor of Louisiana, and upon this alone does the committee rest the case. It is admitted that he must be the governor to give the certificate any power whatever. In raising the question, it is shown that he is only governor *de facto*, if governor at all, and not *de jure*, that is, governor for a purpose only, and that purpose to be judged of whether proper or not, when the exigency arises. It is upon us, and it is whether we shall constitute members of this body upon the certificates of such a governor, or shall we not rather recur, as we have before inquired, into the election itself or the record of it.

Upon this body rests the duty of preserving its own organization, and of admitting its own members. Here its power is supreme, and for its independence it must depend upon this power, and its proper and legal and rational exercise; and it is to judge of the fact whether a certificate (not of the governor, as contemplated by the law, a rightful governor in all respects—but of such a governor) shall have the efficacy now asked for it.

Indeed, in this very case, in the complications in Louisiana, the troubles and disorders there, the very soul of the objection that we now urge against the recognition of this certificate is made to appear. There is trouble about the State government in that State. There is trouble as to whom is the constitutionally elected governor, both claiming it, and as to which body of the two claiming to be the legislature is the real one. In this contest, where so much right is involved, and where right should be done, might it not be that, if we should admit Pinchback upon the certificate of Kellogg, we would, to that extent, recognize him as the rightful governor of Louisiana, and possibly direct additional power against the other side. Would this be wise, and just, and expedient; and when we know, too, that so far as the certificate in itself is concerned it adds nothing to title, but that the election constitutes this?

If it is the part of policy to settle these disturbances in Louisiana, to recognize either governor or none, do it in the usual manner known to the laws, and that is by legislation upon the part of Congress, when the whole subject can be considered, and the remedy, if any, be applied.

Having come to the conclusion that Kellogg was a mere usurper and the certificate not entitled to respect, or if it should be considered by some that he was the governor *de facto*, that even in this view no force ought to be given to his certificate, we are brought to the consideration of the main fact itself, the election of Pinchback by a legislature. While this is not technically before us, it is substantially. While the report of the committee bases its action entirely upon the force of the certificate, the resolution submits the question of admission generally. It cannot be denied that the inquiry upon one branch opens up the whole subject, and one cannot be well considered without considering both.

This brings us to the examination of the body organized under the returns made by the Lynch board, to which we have referred in the other branch of the case. In looking into the organization that elected Pinchback, the surreptitious inauguration of Kellogg into the gubernatorial office pales into insignificance before the fraudulent creation of this body into a legislature and of its shameless pretension to power.

Even admit that Kellogg was the rightful governor of Louisiana, and that his certificate should have all the force which could properly under ordinary circumstances attach to it, still all the facts are before us, and they are of the gravest character. The question is not who are members of the legislature of Louisiana—for that body is the judge of this, and of their elections and qualifications; with these we have nothing to do—but the question is as to the legislature as organized, whether there is one in being to elect, and whether such an one elected Pinchback. The existence of a legislature competent to elect a Senator is not only a historical fact to be known to us as any other patent fact, but it is one which is susceptible of proof.

It will be necessary again to give a brief *résumé* of the facts known to exist in Louisiana respecting the organization of the body claiming to be the legislature of that State, and which elected Pinchback.

It will be remembered that the election occurred on the 4th day of November, 1872, and it was held under the election law passed in 1870. The law provided for a board of returning officers, before whom all the returns of the State were to be laid by the governor, to be canvassed and compiled; and further provided that the governor—Warmoth, the lieutenant-governor—Pinchback, secretary of state—Herron, and John Lynch, and T. C. Anderson comprise this board. It met on the 13th and 14th November. Pinchback and Anderson, being candidates for office, were disqualified. The governor, Warmoth, removed Herron and appointed Wharton in his stead as secretary of state, by virtue of which he claimed to be a member of the board. Differences arose in supplying the vacancies occasioned by the disqualification of Pinchback and Anderson. The result was two sets of returning officers, each claiming to be the rightful, legal board, one headed by Warmoth as governor, consisting of himself as governor, Wharton as secretary of state, Hatch, and Du Ponte; the latter being chosen to fill the vacancies. The other board, headed by Lynch, consisting of himself, Herron, who still claimed to be secretary of state, Longstreet, and Hawkins, the latter being chosen to fill the vacancies. Both boards applied to the courts of the State, and in the midst of the litigation as to which was the legal board, the governor, Warmoth, on the 20th day of November, A. D. 1872, approved an act which had been

passed at the previous session of the legislature, repealing entirely the act passed March 16, 1870, for conducting elections, and under which this election had been conducted up to this time. This act abolished the returning board established by the act of 1870, and made provision for another one to be elected by the senate. This disposed of both boards. No election-returns had been laid before either. There being no returning board in legal existence to canvass the returns, and there being no session of the senate, so that a board could be elected as provided by the law, to consist of five persons, the governor claimed his right to make the appointments under the power to fill vacancies as provided by this article of the constitution of Louisiana, (article sixty-one, title three:) "The governor shall have power to fill vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of the next session thereof unless otherwise provided for in this constitution," &c. On the 3d day of December he appointed De Feriet, Wiltz, Isabelle, Austin, and Taylor. On the day following he submitted the official returns to them, and they canvassed and compiled them, and with the results we have before given, showing a large majority of democrats and conservatives in both branches of the legislature. Upon the same day he made official proclamation of the results ascertained by this board, as follows:

PROCLAMATION.

STATE OF LOUISIANA, EXECUTIVE DEPARTMENT,
New Orleans, December 4, 1872.

Whereas P. S. Wiltz, Gabriel De Feriet, Thomas Isabelle, J. A. Taylor, and J. E. Austin, returning-officers appointed by the governor to fill vacancies existing, in accordance with the constitution and laws of the State of Louisiana, have made declaration of the result of an election held November 4, 1872, and have declared certain persons elected to the senate and house of representatives of the State of Louisiana, as will appear from the returns herewith attached and made a part of this proclamation; and

Whereas such returns are compiled from the official returns of commissioners of election and supervisors of registration, on file in this office, and are in fact and in form accurate and correct, and made in accordance with law:

Now, therefore, I, Henry Clay Warmoth, governor of the State of Louisiana, do issue this my proclamation, making known the result of said election aforesaid, and command all officers and persons within the State of Louisiana to take notice of and respect the same.

Given under my hand and the seal of the State this fourth day of December, A. D. 1872, and of the Independence of the United States the ninety-seventh.

H. C. WARMOTH.

By the governor:

Y. A. WOODWARD,
Assistant Secretary of State.

At the same time the Lynch board, continuing its organization notwithstanding the repeal of the act under which they pretended to canvass, and from the data to which we have already referred, declared who were elected members of the legislature, a large majority of whom were republicans.

Governor Warmoth, when he approved the bill on the 20th November, repealing the election-law of 1870, at the same time called an extra session of the legislature to convene on the 9th day of December, A. D. 1872, the regular session being that to begin in January, 1873.

Warmoth was the regularly constituted governor of Louisiana. The only board of returning-officers in existence, having the semblance of law to sustain a legal character, was the De Feriet board, appointed by him. This board, and only this board, had canvassed the official, regular returns of the election, and announced the result, and gave certificates of election. It was well known that the governor, wielding

the whole executive authority of Louisiana, would recognize the members as returned elected by the De Feriet board to be rightfully entitled to organize the legislature; that the members would meet on the 9th of December, as was directed by his proclamation, and organize the legislature; and that it would be recognized as the legislature of that State, as it would be in right and in fact the legislature. It was well known that that organization would run into the regular session, and that, continuing the legislature of this State, the returns as examined by the De Feriet board would be submitted to it, and that McEnery would have been declared elected, and would have peaceably entered into the exercise of the office of governor, which would, of course, have closed the career of Kellogg, Pinchback, and their associates, for the present, in this respect.

All this was well apprehended by Kellogg and his associates. The State courts had failed them, and the determination was to resort to another and a stronger tribunal. Kellogg, Pinchback, and Packard determined to enlist the courts of the United States in their behalf. So early as the 16th of November William Pitt Kellogg filed his bill in the circuit court of the United States for the district of Louisiana against Governor Warmoth and others, ostensibly for the purpose of preserving or perpetuating the evidence of the official returns of the election, then in the hands of Warmoth, or under his control, and praying, among other things, for an injunction. On the day following, the injunction was issued as prayed by the bill.

On the 20th November the defendants answered the bill, and the case rested until the 5th of December.

On the 4th of December Governor Warmoth issued the proclamation before cited, whereupon the judge, E. H. Durell, without any application or motion whatever made in the cause, issued the following order:

Circuit court of the United States, fifth circuit and district of Louisiana, in equity—No. 6830. William P. Kellogg *vs.* H. C. Warmoth *et als.* Whereas Henry C. Warmoth, one of the respondents herein, has, in violation of the restraining order herein, issued the following proclamation and returns of certain persons claiming to be a board of returning-officers, all in violation and contempt of said restraining order, as follows, viz, &c., &c.:

Now, therefore, in order to prevent the further obstruction of the proceedings in this cause, and, further, to prevent a violation of the orders of this court, to the imminent danger of disturbing the public peace, it is hereby ordered that the marshal of the United States for the district of Louisiana shall forthwith take possession of the building known as the Mechanics' Institute, and occupied as the State-house for the assembling of the legislature therein, in the city of New Orleans, and hold the same subject to the further order of this court, and meanwhile to prevent all unlawful assemblage therein under the guise or pretext of authority claimed by virtue of pretended canvass and returns made by said pretended returning-officers in contempt and violation of said restraining order; but the marshal is directed to allow the ingress and egress to and from the public offices in said building of persons entitled to the same.

E. H. DURELL.

This was done on the night of the 5th of December, and at 2 o'clock on the morning of the 6th of December Marshal Packard, with a detachment of United States soldiers, seized the State-house and held it for weeks.

Under that order this pretended legislature was organized, and the members only who were returned by the Lynch board were permitted to enter the hall or participate in the organization. This organization continued to be protected by the military power of the United States through the extra session into the regular, which began its session on the 6th day of January, and all the time under the protection of the military authority of the United States, and, indeed, which protection has continued to this day. It will be proper to observe that Kellogg com-

menced his proceedings in the United States courts on the 16th of November. A few days thereafter, on the 27th of November, Kellogg writes to Attorney-General Williams the following :

I therefore respectfully suggest that General Emory, who I think appreciates the necessity and sympathizes with the republican party here, be instructed to comply with any requisition that the United States courts may make upon him in support of its mandates and to preserve the peace. As at present advised, I think General Emory understands that he is to use the troops in no contingency without instructions from Washington.

On December 3 the following order was received from Washington :

DEPARTMENT OF JUSTICE, *December 3, 1872.*

S. B. PACKARD, Esq.,

United States Marshal, New Orleans, La.:

You are to enforce the decrees and mandates of the United States courts, no matter by whom resisted, and General Emory will furnish you with all necessary troops for that purpose.

GEO. H. WILLIAMS,
Attorney-General.

On the night of the 5th of December the mandate of Judge Durell was made, and on the morning of the 6th the military, in pursuance of the order of Attorney-General Williams, seized the State-house, and the plot to seize the State government of Louisiana was consummated.

The simple detail of these facts ought to be sufficient in themselves to characterize the whole transaction, without any illustration upon our part. There was not a step taken in the whole proceeding that is to be justified ; there is no single act to be supported by any resort to reason, law, or justice. The reckless assumption of Judge Durell to interpose in matters wholly belonging to the State authorities, and in terms prohibited from doing what he did by the very law of Congress under which he pretended to derive authority to act, is beyond all precedent, and one cannot adequately characterize it in language to be used here. The atrocity of his action in directing the marshal of the United States to seize the State-house, where the legislature of the State was to convene, and further directing him to allow certain of its members only to enter it, has but few parallels anywhere, and none before in American history. The whole proceeding, from its inception down to its final consummation, was a gross usurpation, accompanied with every species of fraud and tyranny. The body that was organized under this mandate and its military enforcement is not entitled to any legal existence that any American should acknowledge. The whole is a product of fraud, conspiracy, and of armed force, and is entitled to no consideration.

We wish it to be remembered that we are not inquiring into the component parts of a legislative body. Each house of the legislature must do that for itself. We are inquiring into the aggregate character of the body as organized, and as it represents itself to be—a legislature ; how it was brought into being ; how supported ; and under what authority. We find no single element in it to constitute it a legislature representing the free people of Louisiana under their constitution and laws ; but, on the contrary, simply a body organized under the mandate of a Federal judge, supported by the armed force of the United States, based upon a pretended election found by a returning board without a single official return, and not having a tittle of authority, and acting in violation and in defiance of all law. We find that body, pretending to be the legislature of Louisiana, the mere creature of a conspiracy as bold, as reckless, and as wicked as any that has ever disgraced the annals of history. We speak thus strongly because our instincts as American citizens prompt us to the reprobation it so signally deserves. This body

thus organized chose P. B. S. Pinchback a Senator in Congress for the period he claims.

The large mass of the members of it were never elected in fact; the returning-board declaring them to be elected had not a single power to do so; it never had an official return before it. Judge Durell had no power to issue his mandate, and the troops had no right to enforce it. In the whole tragedy of events, as each succeeded the other, there was not one single act that could for a moment give a color of right to any other. Every one was an undoubted wrong, crime, or usurpation, and yet all combined, and nothing else, organized this body and kept it in being. Can such a body, we ask, so organized, put upon the Senate and upon the people of Louisiana their creature, and he one of the main conspirators? Kellogg, Pinchback, Casey, Packard, Durell, and Williams, names indelibly written upon every page of this most unnatural history of political crime and folly! There is not a single act in the whole proceeding to mitigate the unqualified condemnation it must receive at the hands of every honest man and of every sincere lover of American liberty and of constitutional government.

We have stated that the Lynch board, pretending to canvass the returns, had no legal existence; that no official returns were before it to canvass; that the order of Judge Durell was not only void for want of jurisdiction, but that it was a gross usurpation. To sustain all this, it is not necessary to depend upon our own declarations; but we recur, and with pleasure, to the able report so often referred to. In addition to what we have already quoted upon this subject, we give the following. In speaking of this order of Judge Durell, and in connection with it of the De Feriet board, the committee say, on page 17 :

It is impossible to conceive of a more irregular, illegal, and in every way inexcusable act on the part of a judge. Conceding the power of the court to make such an order, the judge, *out of court*, had no more authority to make it than had the marshal. It has not even the form of judicial process. It was not sealed, nor was it signed by the clerk, and had no more legal effect than an order issued by any private citizen.

There had been no amendment of the bill of complaint. The law of November 20 had been promulgated. The De Feriet board had been appointed in pretended pursuance thereof. Whether, under the constitution, the governor had the power, in the vacation of the legislature, to appoint that board, upon the ground that the act of November 20 created offices, and therefore vacancies in office, your committee do not inquire. But it is understood that the constitution has been so construed in that State, and that Judge Dibble was appointed by the governor under similar circumstances.

The De Feriet board, therefore, had color of official existence. Their canvass was completed, and the result promulgated under color of the State law, and it is clear that this gave the Federal court no more right to seize the State-house than to seize the Capitol.

Further, in speaking of Judge Durrell, the committee say, on page 27 :

Viewed in any light in which your committee can consider them, the orders and injunctions made and granted by Judge Durell in this case are most reprehensible, erroneous in point of law, and are wholly void for want of jurisdiction; and your committee must express their sorrow and humiliation that a judge of the United States should have proceeded in such flagrant disregard of his duty, and have so far overstepped the limits of Federal jurisdiction.

Again, on page 28, the committee say :

But for the interference of Judge Durell in the matter of this State election a matter wholly beyond his jurisdiction, the McEnery government would to-day have been the *de-facto* government of the State. Judge Durell interposed the Army of the United States between the people of Louisiana and the only government which has the semblance of regularity, and the result of this has been to establish the Kellogg government, so far as that State now has any government. For the United States to interfere in a State election, and, by the employment of troops, set up a governor and legislature without a shadow of right, and then to refuse redress of the wrong, upon

the ground that to grant relief would be interfering with the rights of the State, is a proposition difficult to utter with a grave countenance. Besides, it is impossible to determine to what extent the supreme court may have been influenced in rendering this decision by the fact that the Kellogg government, the creation of the Lynch board, had already been established, and the expectation that it would be sustained by Federal authority.

Again the committee, in discussing another point of the subject, allude incidentally to the manner in which the Kellogg legislature was organized. The committee say, on page 47 of their report :

In November, 1872, Judge Howe, of the supreme court, resigned, and Governor Warmoth commissioned J. H. Kennard to fill the vacancy. *After the Kellogg legislature was organized under Judge Durell's injunction, enforced by United States troops, the house of representatives of that legislature pretended to impeach and suspend Governor Warmoth, whereupon Pinchback, who had been elected president of the senate in place of Lieutenant-Governor Dunn, deceased, which under the constitution made him lieutenant-governor, proclaimed himself acting governor in place of Warmoth, impeached and suspended. Pinchback afterward nominated Morgan, who was confirmed by the senate, to fill the same vacancy.*

Also, we cannot refrain from giving the following from the chairman of the committee, Mr. Morton, who in a dissenting opinion used this language respecting Judge Durell and his official conduct :

The conduct of Judge Durell, sitting in the circuit court of the United States, cannot be justified nor defended. He grossly exceeded his jurisdiction, and assumed the exercise of powers to which he could lay no claim.

But the pretense that in a suit to perpetuate testimony the court could go beyond the natural and reasonable jurisdiction, to decide who constituted the legal returning board under the laws of Louisiana, and to enforce the rights of such as it might determine to be members of that board and to enjoin others who were not, is without any foundation in law or logic.

In the Antoine case Judge Durell not only assumed to determine who constituted the legal returning board, but to prescribe who should be permitted to take part in the organization of the legislature and to enjoin all persons from taking part in such organization who were not returned by the Lynch board as elected ; and this assumption of jurisdiction was made in the face of the express provision in the act of 1870 that its benefits should not extend to candidates for electors, for Congress, or for the State legislature. His order issued in the Kellogg case to the United States marshal to take possession of the State-house for the purpose of preventing unlawful assemblages, under which the marshal called to his aid a portion of the Army of the United States, as a *posse comitatus*, can only be characterized as a gross usurpation.

Thus it appears that the whole committee regarded the acts of Judge Durell as a gross usurpation, yet upon that act alone rests the organization of the Kellogg legislature. A body thus organized and thus constituted, as shown by all the facts in the case, is not entitled to any respect, and particularly is not entitled to impose a Senator upon this chamber, upon the country, and especially upon the people of Louisiana, as their representative upon this floor. In contrast with this body, we know there was a rival body, a rival State government, so far as the State and local officers were concerned ; a rival government, too, not depending upon armed forces for organization and existence. A government, though not in active power, was still in being. That rival government, the facts most conclusively show, depended for its legal existence—

1st. Upon the official returns of the votes cast at the regular election, and canvassed and counted by a board of returning-officers known as the De Feriet board, appointed by the governor, as he claimed he had the right to do under the act of November 20, 1872, and the board, in the opinion of the undersigned, that possessed the power to canvass the returns.

2d. Upon the official returns as canvassed and counted by the board elected by the senate of the McEnery legislature, as provided under the same act, and known as the Forman board.

3d. Upon the undoubted fact that the official returns were true and gave the results as ascertained by both boards.

4th. Upon the undoubted fact that the people of Louisiana are satisfied that their real will was expressed in these official returns, and that this—the McEnergy—is their chosen government.

5th. Upon the undoubted fact that nothing could have prevented its going into peaceful operation and being the government to-day, except for the interposition of Judge Durell and his associates in that crime, supported by the armed forces of the United States.

Upon the other hand, the Kellogg government depends—

1st. Upon the canvass of a returning-board having no authority and having no official returns to canvass.

2d. Upon the illegal order of Judge Durell, and the enforcement of it by United States troops.

3d. Upon the military protection of the United States, and upon that protection alone, as it is an undoubted fact that the withdrawal of this protection would result in an instant dissolution and dispersion of his government.

Can the Senate hesitate to determine between such governments? The interposition of mere force without cause and without right, by which one for the present may be put up and the other down, should not deter us in determining which is the rightful one. The soldiers of the United States should not be allowed to step in between our judgment and our duty. The day is not yet upon us, we trust, when the sword is to settle questions alone for us to determine. Taking all the facts as they appear in the case before us, from the inception of each rival body to the final consummation in their respective organizations, we can determine between them. It is our duty to do so; and we have facts sufficiently numerous and authentic to determine fairly and intelligently between them. Each have chosen Senators, and both are here with certificates.

There can be no doubt that where there are rival bodies, each claiming to be the rightful legislature of a State, and each presenting a Senator for admission upon this floor, we must judge between them, for the reason that we are to judge of the elections, the qualifications, and returns of our own members—and in this we are to know whether the body choosing a Senator is *the legislature* having the constitutional right to do so, and that such an one did choose a Senator.

This was clearly submitted in the case of Robbins and Potter, contesting Senators from Rhode Island. Mr. Poin Dexter, who submitted the majority report in that case, says:

There was but one governor and but one senate in the State claiming to be a part of the general assembly. If there had existed another body of men, however chosen, contending for the offices of the governor and senators in the State, it will not be denied that their respective rights might be the subject of inquiry in deciding a contested election in the Senate of the United States.

The right of the Senate is undoubted to judge in this respect. Its power is not limited, for the sound reason that its independence can only be absolutely preserved in possessing such a right. In exercising it here, we should not be capricious, but governed in our conduct by rules, that good sense, honest intention, and a desire for truth and justice should naturally inspire. No other department of the Government ought to control it; no other department of the Government should be allowed, under any pretext or in the exercise of any power, to trench upon it. It is a primary right, for in its free and absolute exercise, the very life, existence, and organization of free legislative bodies depend.

Coming to the main point again, should the Senate hesitate between the rival governments? How can the Senate recognize the Kellogg government, stamped, as it is, all over with fraud, conspiracy, and force? There is not an element of free constitutional government in it. Mere intruders and usurpers in all departments of it, how shall the Senate, in respect for constitutional government, admit that such a body as that organized under the order of Durell shall impose upon us a Senator? We might receive with just as much plausibility and complacency a Senator from the soldiery who guarded that body when it went through the forms of choosing one. The bayonet organized it, kept it in being, protected it by day and by night, and without it no one would be here pressing a claim to a seat by virtue of any authority from it.

Speaking for ourselves, we cannot in any manner acknowledge any such election. We cannot give any respect or efficacy to the certificate under consideration as that of a rightful governor, and must, therefore, declare that in our opinion P. B. S. Pinchback is not entitled to a seat as a Senator from the State of Louisiana.

It is said that the Senate is bound, or ought to be bound, by decisions of the judicial tribunals of the State when inquiring into the existence of a government or of its officers; also by the action of other departments of the State government; also by the late act of the President, and by reason of the possession of the office for a length of time. We shall only briefly remark that this body is bound by nothing in the exercise of its undoubted power. But admitting that any or all of these combined should have more or less influence upon the judgment of the Senate in coming to conclusions, we may be permitted to say that, in regard to the judicial action of the courts of Louisiana in relation to this subject, the question in issue never was fairly presented, and with the further remark that it is painfully evident that a majority of the court deciding cases having relevancy at all to the subject was in complicity with the Kellogg government to maintain its power; and so with the other departments of the State government, for all depended for their very existence upon the official being of Kellogg. As to the action of the President having any binding force upon the Senate, we say that his power to act relates alone to one thing, and that is the suppression of violence when legally called upon for aid in suppressing such violence. His action cannot bind beyond the simple fact and its real dependents; it decides no right for us or for Congress. One word as to the continuous possession of Kellogg, and which it is claimed gives him some standing to be considered in this body. His possession is that of fraud and force, and this possession is to-day only held by this force. It is the possession of might against right, and the weakness of the title will at once be witnessed upon the withdrawal of the force which keeps him in place. In our opinion, there is nothing in the matters that would be set up to secure a recognition of the Kellogg government. The whole is a crime against our civilization and a blot upon our free institutions.

WILLIAM T. HAMILTON.
ELI SAULSBURY.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1875.—Ordered to be printed.

Mr. CLAYTON submitted the following

REPORT:

[To accompany bill S. 1269.]

The Committee on Military Affairs, to whom was referred the petition of Royal W. Riddell, praying that he may be allowed the pay of a first lieutenant of volunteers from June 13, 1864, to April 20, 1865, less the amounts already received by him as first sergeant during that time, have had the same under consideration, and beg leave to submit the following report:

The records show that this man enlisted in the One hundred and forty-fifth Regiment Pennsylvania Volunteers on August 12, 1862, and served until May 12, 1864, when he was captured by the enemy at or near Spottsylvania Court-House; that he was exchanged on March 29, 1865, and returned to his regiment for duty on April 19, 1865, and that he was mustered as a first lieutenant on April 20, 1865. The governor of Pennsylvania issued a commission to said Riddell as a first lieutenant on June 13, 1864, and the records of the War Department show that there was a vacancy as first lieutenant in his regiment on September 21, 1864.

Your committee are of the opinion that Riddell should not be deprived of the advantages of the position to which he had been appointed by reason of his being captured while in the performance of his duty, and therefore report the accompanying bill allowing him the pay of a first lieutenant from September 21, 1864, (the date on which a vacancy occurred to which he could have been appointed,) to April 20, 1865, the date of his muster-out, less amounts received by him as pay of first sergeant during that time, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. SCOTT submitted the following

REPORT:

[To accompany bill S. 1041.]

The Committee on Claims, to whom was referred the bill (S. 1041) for the relief of Joseph R. Shannon, of Louisiana, having considered the same, submit the following report:

The bill proposes to pay to Joseph R. Shannon the sum of \$37,000, \$17,000 of it being in addition to the amount allowed at the last session of Congress for the value of the steamer W. Burton, and in correction of the error in the allowance made in the report of the Commissioners of Claims, and \$20,000 of it for the use of the said steamer while employed in the military service of the United States. Mr. Shannon presented his claim to the Commissioners of Claims under the act of March 3, 1871. Before them he claimed the value of the boat, \$34,000, and for her services \$21,250, making his whole claim \$55,250. The commissioners rejected the claim for the services of the boat, and allowed him \$13,000 as the value of the boat at the time it was taken by the Government. Their report was made in pursuance of the said act to the first session of the Forty-third Congress, and an appropriation to pay Mr. Shannon was embraced in the general bill passed for the payment of claims reported allowed by the commissioners. When that bill was before the Senate Committee on Claims Mr. Shannon addressed the following letter to Senator Merrimon, the member of the committee to whom his claim, among others embraced in the general bill, was assigned for examination:

WASHINGTON, D. C., June 8, 1874.

SIR: Learning that my claim for the steamboat Burton, reported to this session of Congress by the Commissioners of Claims, has been referred to you by the Senate Committee of Claims for report, I beg to say that while the \$13,000 allowed me is less than one-half the value of the steamer, as shown by all the evidence in the case, I am constrained not to ask a review of the allowance under present circumstances, thus involving a delay of the general bill, and jeopardizing its passage at the present session. In view of the interest of the many other claimants in the bill who would thus be delayed, I feel that I cannot rightfully seek the redress to which I am entitled by asking your committee to embarrass the general measure for relief for my benefit. I hope and believe that the Government will in some way and at some time provide for doing me full justice in this matter.

Most respectfully,

JOS. R. SHANNON.

Senator MERRIMON.

When he received the sum of \$13,000, in pursuance of the act passed for the payment of the claimants, he filed a protest in the Treasury Department, and now comes asking Congress to pay him the amount

which the Commissioners of Claims rejected. We do not deem it necessary to go into a full history of the case as presented before the commissioners, but a brief glance at it shows how impolitic it would be for Congress, after having provided this tribunal for claimants, to permit them to receive what they can get by its awards, and then entertain applications *ad infinitum* for further relief.

The steamer W. Burton was seized April 17, 1862, by the confederate authorities, and April 24 was captured by Admiral Farragut and turned over to General Butler, then commanding the United States land-forces at New Orleans, and by him used in the Quartermaster's Department of the Army as a transport from May 1, 1862, to January 1, 1863, when she was snagged, sunk, and became a total loss.

Prize-money amounting to \$13,000 was paid to Admiral Farragut and his crew upon the capture of this vessel. The claim of \$20,000 for her use during this period, and of her full alleged value of \$30,000 in addition, after the Government has thus paid prize-money to her captors, shows that Mr. Shannon is certainly not unwilling that the Government should bear all the expenses, while he reaps all the benefits of capturing his property from the enemy. When this disposition is shown, it is certainly not the duty of those who have the interests of the Government in their hands for protection to give him access to every tribunal in which there may be a remote hope of making his claim successful. Having given him a special tribunal, of which he has availed himself, public policy requires that he and all others who do likewise should be informed, so far as this committee can inform them by this precedent, that after they have accepted the amount of money awarded them, protest against its acceptance and petitions for further amounts will be unavailing. "*Interest reipublicæ ut sit finis litium.*" With 22,298 cases filed before the Commissioners of Claims, certainly this maxim, applied to the suits of individuals in court, should be considered a wise one to be applied to the claims of citizens against the Government. We recommend that this bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. WRIGHT, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Marcus Walker, beg leave to submit the following report:

This case was before the committee, and the following report made thereon on the 24th January, 1873:

Petitioner asks the passage of a bill giving the Court of Claims jurisdiction to adjudicate his claim for the proceeds of 99 bales of cotton (45,342 pounds, valued at \$27,205.20) taken on the 26th of April, 1863, at Franklin, La., giving, as a reason for not resorting to that tribunal before the bar of the statute applied, that he could not prepare the case for submission in time, after the same had been decided against him by the Secretary of War, where it had been pending and long delayed.

It appears, according to the averments of his petition, that he is and was a loyal citizen; that this cotton was taken by Lieutenant Dooley, acting post-quartermaster, in the name and under authority of the United States, shipped by him to Captain Dennett, at Brashear City, who, under instructions from Lieutenant-Colonel Chandler, assistant quartermaster, United States Army, forwarded the same to the chief quartermaster at New Orleans, and afterward, as far as petitioner is informed, it was sold by the agents of the Government, and the amount realized therefrom deposited in the Treasury thereof. He also says that his claim was presented to the Secretary of War, who decided against it, whereupon, &c.

The evidence as to loyalty we do not set out, for, assuming it to be sufficient, we should still have to inquire whether he makes out such a *prima-facie* case of loss of property as to entitle him to the relief asked.

Upon this point the only evidence is found in the certificate of S. B. Holabird, colonel, chief quartermaster Department of the Gulf, under date of the 23th of October, 1865, which, so far as here material, is as follows: "From personal knowledge of the case and from reliable information supplied me by competent persons, I believe the claim to be a just one; that the said claim was some time ago presented to me for payment, but I did not pay it, feeling that my authority did not extend to its settlement. * * I certify that I regard the claim as just."

This and no more is his case. It is so entirely wanting in every element of competent evidence that we are not prepared to say that it should go to the Court of Claims. It was rejected by the Secretary of War, and the reason given for not proceeding in time before the Court of Claims is entitled to but little credit. Years have elapsed since the alleged seizure, and the Government must reasonably be at not a little disadvantage in contesting the claim, as compared with a hearing recently thereafter. Add the most material circumstance, that the certificate relied upon does not state facts, but conclusions; that the officer does not profess to know much, if anything, of the actual facts of the case; that he could state all he does, from a very little personal knowledge and more or less of information derived from others, and the case is certainly not one demanding the proposed action. Congress should not burden the court with additional cases, under what are urged as special equitable circumstances, unless it is fairly probable that the claimant has not himself been in default; also, that he has a case upon the evidence submitted which, *prima facie*, entitles him to relief.

The committee ask to be discharged from the further consideration of the petition.

The petitioner, on 24th May last, again presented his petition, asking that the case be re-examined. In support thereof the only additional

evidence is the affidavit of two witnesses, the material part of which is as follows :

We know the fact of ownership by said Walker of said cotton, by having seen the said ninety-nine bales of cotton in his possession, stored by him in his private warehouse in the town of Franklin, parish and State aforesaid, and by him removed therefrom to a place supposed of greater security, out of the reach of the confederate authorities, who threatened to burn the same; from which latter place, about one mile back of the town of Franklin, said cotton, to our knowledge, was taken on the 26th of April, A. D. 1863, as aforesaid, having witnessed the removal of the same by the United States quartermaster's wagons.

Referring to the former report it will be seen that, though we concede that the evidence of ownership is aided by these affidavits, the weak point in the claimant's case is in no respect assisted, for there is no attempt at showing why he made default, or failed in time to present his case to the proper tribunal.

Looking at the entire case, and especially the want of evidence upon this material point, we again ask to be discharged from a further consideration of the petition.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. SCOTT, from the Committee on Claims, submitted the following
REPORT:

The Committee on Claims, to whom was referred the petition of Jearum Atkins, asking a rehearing of his case upon which a previous adverse report had been made, having considered the same, submit the following report:

The adverse report previously made (Senate Report 398, Forty-third Congress, first session) was based upon the ground that the Government cannot undertake to relieve the misfortunes of those citizens, however meritorious, who have obtained patents and failed to realize therefrom profit as large as they think they deserved.

Your committee do not find, either in the alleged action of one branch of Congress upon the bill for the relief of the heirs of Jethro Wood, or the statement of the number of self-raking reapers that are now manufactured in this country, anything to induce a reversal of the former decision, and they therefore ask to be discharged from the further consideration of this petition.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of George Tobin, late captain of Company D, Sixty-third Regiment New York Volunteers, submit the following report :

This is simply a claim for arrears of pension. The captain was disabled in the peninsula, and resigned in consequence, receiving an honorable discharge. In July, 1863, he applied to a claim-agent in Washington City to secure him a pension, but was advised by him that he had no valid claim. In this belief he rested, and made no further effort until five years had rolled around since the period of his discharge. In December, 1867, he formally applied for a pension, and in April, 1869, it was allowed at \$20 per month, his pension dating back to the date of application. What he wants now is arrears at that rate from the 4th September, 1862.

The committee are of opinion that he has no claim which ought to be recognized. He knew the facts in his own case, and was chargeable with knowledge of the law. He says he was misled by Coggsell, the claim-agent; but we have not heard from that gentleman, and it would not be quite safe to infer that he was wrong in his opinion merely because Tobin has succeeded in getting a pension. It may be that Coggsell was right and the Pension-Office wrong. We do not go into that inquiry. It is enough to know that his excuse for not applying within five years is not valid. Coggsell was not the only claim-agent or pension-attorney in the country; and if petitioner was strongly impressed with the idea that he had a meritorious claim, it is incredible that he should not have fallen in with somebody in his jostlings with the world for five long years that did not undeceive him, and advise him of his rights. Either he could not have been inquisitive, or others may have advised as Coggsell did.

But, however this may be, the committee do not feel disposed to single out this case from thousands who are clamoring for arrears upon grounds quite as solid as Captain Tobin's. When the business of paying arrears begins, the Treasury should be in better condition than now, for the committee are advised that more than \$9,000,000 would be required to satisfy all such demands.

They, therefore, ask to be discharged from the further consideration of this petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

REPORT:

The Committee on Pensions, to whom was referred the petition of Ezekiel Waire, Mary Potter, Martha Lord, David Waire, and Charles Waire, praying to be allowed a pension in right of their father, John Waire, submit the following report:

The petition alleges that the said John Waire served as a soldier in the war of the revolution at various times, to wit, six months from May, 1776, to November in that year; nine months from January, 1777, to October in that year; and six months from August, 1778, to February, 1779, in different companies and regiments, making twenty-one months' service in all. He made application for a pension in April, 1818, but failed for want of proof on certain points, but chiefly because the officers under whom he served were not United States but State officers. He died in 1826, and his widow in 1831, after having been supported some years by her children. They now pray for a pension in right of their father.

The Pension-Office, to whom the petition was referred, reports that search has been made, but no claim corresponding to this has been found.

No evidence in support of the petition has been furnished. The petition itself is not sworn to; but, admitting its truth, it would be carrying the principle too far to allow pensions to grown-up people who claim through a soldier long since deceased.

The committee therefore ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 3696.]

The Committee on Pensions, to whom was referred the bill (H. R. 3696) granting a pension to Mary A. Hough, widow of Joseph Hough, sergeant of Company B, Sixty-first Regiment Pennsylvania Volunteers, report :

The evidence in this case shows that the soldier was wounded in the service, and, after his discharge, in 1864, he enlisted again for one year, and served in the Veteran Reserve Corps until discharged in 1866. The disease of which he died, however, does not appear to have been traceable to the wound. There does not seem to be sufficient ground upon which to justify a pension to his widow, and the committee therefore recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

R E P O R T :

The Committee on Pensions, to whom was referred the petition of Mary Ryan for a pension, submit the following report:

She claims as the dependent mother of William Ryan, of Company I, Third Regiment Illinois Cavalry Volunteers, who, in April, 1864, died, as is alleged, of wounds received in the line of duty. She alleges that her application for a pension has been denied by the Commissioner. She refers to the evidence on file in the Pension-Office for proofs in her case. The Commissioner informs the committee that the claim was rejected May 3, 1872, on the ground that the claimant was not dependent on the soldier for support; but that the case was re-opened on the 4th of February, 1874, for reconsideration, and is still awaiting evidence to show the circumstances under which the wound that caused the soldier's death was received.

Under these circumstances, the committee are of opinion that action by Congress should be deferred until the case is finally decided at the Pension-Office, and hence ask to be discharged from its further consideration. It is scarcely necessary to look into the proofs until they shall be completed in the proper tribunal where the case is pending.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following.

REPORT:

[To accompany bill H. R. 3703.]

The Committee on Pensions, to whom was referred the bill (H. R. 3703) granting a pension to Catharine Lee, widow of Jesse M. Lee, private in Company B, Second Regiment Ohio Volunteers, report:

The only question not satisfactorily settled by the proof before the Commissioner of Pensions to justify a pension was, did the suicidal wound, which caused the death of Lee, result from any disease contracted in the service? All else is sufficiently proven. The affidavit of W. T. Miller, sergeant of Company H, Seventy-ninth Regiment Ohio Volunteers, made December 8, 1873, and now offered in the case, states unequivocally that Miller personally had known Lee for years; that he was with him in Nashville, Tenn., in August, 1863; and that while Lee was in hospital he frequently saw him; and that Lee was insane, and that it was apparent to any one; and that it was generally known and believed to have been contracted in the service. Lee had then been in the service two years. Other proof shows he was sound and healthy when he entered the service. We think his death justly attributable to the service, and recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 2765.]

The Committee on Pensions, to whom was referred the bill (H. R. 2765) granting a pension to John W. Darby, submit the following report:

Darby's case was rejected at the Pension-Office, November 22, 1872, in accordance with section 6, act of July 4, 1864. The claim made there was that Darby was on detached service, doing duty at headquarters, First Division Fifth Army Corps, about the time of General Lee's surrender, and that he was very much exposed for the period of several days, and, in consequence, contracted chronic inflammation of the liver and irritability of the lungs.

He was a private in Company K, Twenty-second Regiment Massachusetts Volunteers, and drafted into the service on July 11, 1863; and was transferred to Company M, Thirty-second Regiment Massachusetts Volunteers, October 17, 1864, and was employed on detached service in division provost-guard. He was mustered out June 3, 1865, and the muster-out roll of June 29, 1865, shows him to have been absent sick at Campbell General Hospital, in the city of Washington. The diagnosis of his disease appears, by the hospital records, to have been rheumatism.

Thus much for the records.

Captain Chamberlain, who was provost-marshal of the First Division of the Fifth Army Corps, furnished a certificate of the soldier's disability on April 7, 1867, in which he said that, at the time of General Lee's surrender, on April 9, 1865, Darby was on duty at headquarters in his command, and that he was very much exposed for five days and contracted chronic inflammation of the liver and irritability of the lungs, and that when Darby entered the service he was a sound and able-bodied man.

On the 6th of October, 1873, he amplifies this statement under oath, saying that the soldier was in good health and performed his duty until about the time of the surrender, when, on account of the fatigue and exposure during bad weather and hard marching, extending from the 29th of March to the 9th of April, from camp near Hatcher's Run to Appomattox Court-House, his health failed, and on May 1, by order of the surgeon, he was sent to the field-hospital and then to City Point and then to the hospital in Washington, and, as soon as he was able to ride on the cars, he was discharged and sent home. He adds that his disability was contracted while in the service and in the line of duty.

A Dr. Gray, of Cambridge, certifies that he knew the soldier as a boy

JOHN W. DARBY.

and in early manhood, and that he was a healthy boy and young man before he left for the military service.

Dr. Palmer, under date of June 3, 1874, certifies that he had carefully examined Darby and found him in a condition of general debility, disabling him from earning his support, and his opinion is that Darby had a periodical or occasional attack of dyspnoea, caused by rheumatism of the diaphragm, and that he also suffered from dyspepsia and functional disorder of the liver.

Two other witnesses, who had known the soldier for nine years, testify that they saw him when he returned home after his discharge, and that he was sick at that time with what seemed to be some disease of the lungs, and had been out of health ever since; so much so as to render him unable to labor and gain a livelihood by his occupation, which was that of a machinist. This statement was made on December 1, 1873.

This is the substance of the testimony; and although it is not as full as could be desired, the special lack being medical testimony as to the nature of his disease at present and the extent to which it disables him, the committee have concluded to recommend the passage of the bill. Of course, under the law, what his rate of pension will be depends upon the report of the examining surgeon, to whose examination he will be required to submit.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 1039.]

The Committee on Pensions, to whom was referred the bill (S. 1039) to amend the act entitled "An act granting pension to Martha E. Orick, Mary J. Orick, and John J. Orick, minor children of John C. Orick, deceased," have considered the same, and submit the following report:

It appears from the testimony that John C. Orick was in 1861 a citizen of Sevier County, Arkansas, and a Union man; and that, to avoid service in the confederate army, he took to the brush and swamps, and for many months eluded the pursuit of the conscript officers, but was finally captured, and mustered into the rebel service, from which he deserted on or about October, 1862, and made his way to the Mississippi River, and up the river to Cape Girardeau, Mo., where he enlisted in Company D, First Regiment Missouri Cavalry Volunteers, to serve three years or during the war, and mustered in as a private on the 1st of August, 1863. He was admitted to United States general hospital, Little Rock, Ark., December 23, 1864, for treatment for debility, and died February 20, 1865, of consumption.

The widow of the soldier applied for pension, and her claim was rejected because her husband had served in the rebel army. She afterward married again, when Mr. James Orick, father of deceased, obtained letters of guardianship for the minor children of the soldier, and in their behalf renewed the application for pension, which was likewise rejected on the same ground as that of the mother of the children.

A special act of Congress was passed granting to the three youngest children a pension, to date from the passage of the act, viz, March 3, 1873; but no action has been taken under the act, says the Commissioner of Pensions, because the guardian has elected to prosecute the claim again under the general law, the stain upon the soldier's reputation having been removed, as he supposed, by the passage of the special act before referred to.

It appears that the youngest child of the deceased soldier is now thirteen years old, having been born February 10, 1862, and the others are above sixteen.

The bill under consideration requires payment to be made to the children from January 21, 1865, while the act to which it is amendatory made the pension payable from the date thereof. Testimony filed before the Commissioner of Pensions after the date of the special act of 1873 shows that the deceased soldier suffered with attacks of both fever and

diarrhea, from exposure in the swamps and in the rebel camps, before he entered the Army of the United States, and had not recovered from these attacks when he so entered.

Considering the testimony in all its bearings, the committee are of opinion that the soldier's service in the rebel army was involuntary. but it is by no means clear that he died of disease contracted in the service of the United States, because evidently he was more exposed while in the confederate army, and still more while lying out in the swamps. Upon the whole, the guardian ought to be satisfied with the special act as it now stands. The indefinite postponement of the bill is recommended.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3704.]

The Committee on Pensions, to whom was referred the bill (H. R. 3704) granting a pension to Mary E. Stewart, have considered the same, and submit the following report:

Claimant is the widow of Andrew J. Stewart, late second lieutenant of Capt. John N. Bennight's Independent Home Guard Company, of Phelps County, Missouri, which was organized on the 9th of July, 1861, and disbanded about the 20th September thereafter.

Claimant filed her application for pension on the 1st July, 1869, alleging that her husband was killed in the service of the United States, and in the line of duty, on or about the 1st of September, 1861, at Bennight's Mills, in the State of Missouri.

The papers filed in the case in the Pension-Office are very numerous, and the testimony touching the death of Lieutenant Stewart conflicting, while there is almost an entire absence of evidence in regard to the authority under which Captain Bennight was acting during the two months his command served. The claim filed by the widow was rejected August, 1872, on the ground that the soldier was not in the United States service, and not serving with any regularly organized military or naval force of the United States at the time he was killed. It appears from the papers on file that there is no evidence of Lieutenant Stewart's death found among the records, local or national. On the contrary, the roll of Captain Bennight's company, on file in the Adjutant-General's Office at Washington, shows that Lieutenant Stewart was mustered out of service September 30, 1861, and the certificate adds that he was paid for his service in November, 1865.

The case was re-opened at the Pension-Office, and again rejected, because the testimony presented touching the death of Lieutenant Stewart was deemed insufficient by the Adjutant-General of the United States to cause a change of the record. The honorable Commissioner of Pensions, in his letter to the chairman of the Committee on Invalid Pensions of the House of Representatives, of date March 30, 1874, says: "This case was sent to your committee, but was returned by the Hon. J. S. Martin for further investigation by this Office. If the husband was killed in battle at the time and place alleged by the claimant, she would be entitled to a pension under the general pension law, if the fact could be satisfactorily proved."

The testimony as to the death of Lieutenant Stewart, at the time and

place and in the manner stated, is full and ample. There can be no question in the mind of your committee on that point. No less than nine or ten persons, certified to be reputable men, testify positively to the fact, four of whom were members of the company and present, while all were well acquainted with deceased, and most of them on the ground when the engagement took place, or in the immediate neighborhood.

Whether the command of Captain Bennight was in the service of the United States is not so clear; certainly it was not serving with any United States force, regularly organized or otherwise, at the time Lieutenant Stewart was killed, or at any time during the service, so far as the committee can find from the testimony on file. It appears that no record evidence is found, either in the military department of Missouri or at Washington, showing that Captain Bennight was ordered or mustered into the service of the United States. The only evidence on this point is the affidavit of Captain Bennight appended to his muster-roll, on file in the adjutant-general's office in the State of Missouri, dated about two years after the company was disbanded, in which he states that his company was ordered into the service of the United States by Col. John B. Wyman, Thirteenth Regiment Illinois Volunteer Infantry, commanding Post Rolla, Missouri. That is all; and the captain's further statement raises some doubt in the mind of the committee whether he regarded himself as in the service of the United States, for it does not appear that his command was mustered out by any United States officer, nor is it shown that any orders were issued to him during his term of service. Besides, he states in his affidavit that his "company were all mounted during all said term of service, which was continuous. They did not draw any pay from the government of the State of Missouri nor from the Government of the United States, nor anything in lieu thereof, nor has anything been paid since the disbanding or mustering out of said company." Why the members of the company were not paid like all other troops in the service of the Government does not appear.

The fact is disclosed among the papers of this case that sundry members of the company, who were wounded in the same engagement in which claimant's husband was killed, have been placed upon the pension-roll. It is, therefore, manifest that the honorable the Commissioner of Pensions had evidence before him in their cases which satisfied him that the parties were in the service of the United States at the time they were wounded, at the battle of Bennight's Mills, and the objection was finally withdrawn in this case; but your committee have been unable to find any testimony on this point which was not accessible when the objection was made.

Since the foregoing was written the letter of the honorable Commissioner of Pensions, of date December 21, 1874, transmitting to the Hon. J. M. Rusk, chairman of the Committee on Invalid Pensions of the House of Representatives, a letter from the adjutant-general of the State of Missouri, in response to inquiries made by the Pension-Office as to whether Lieutenant Stewart was commissioned by the governor, has been placed in the hands of the committee. The adjutant answers that the records of his office do not show that Lieutenant Stewart was commissioned, but do "show that he was second lieutenant of Phelps County company of Home Guards, organized in July, 1861, by the authority of Colonel Wyman, commanding at Rolla, and disbanded on the 20th of September, 1861, and during their organization the company was engaged in scouting, and had an engagement with the enemy under the rebel Colonel

Freeman at Bennight's Mills, in which the company had several killed and a number wounded."

This is not new testimony. The adjutant evidently refers to the affidavit made upon the muster-roll of the company by Captain Bennight. The language is identical, and it seems to be the only evidence which can now be produced going to show that the company was ordered into service by any United States officer. The company seems to have mustered itself out on its own motion; and its designation implies that it was an independent home company, which it could not have been if organized and ordered on duty by an officer of the United States. Still the committee realizes the great injustice which would be done the claimant were her petition denied, while others only wounded in the same engagement in which her husband was killed are borne upon the pension-rolls. In view, therefore, of the strong probability that sufficient evidence did exist touching the authority under which the company acted, and the improbability that the persons now upon the rolls will be stricken off in any case, the committee recommend that the bill do pass, because there is no room for discrimination against the claimant upon the statement of facts presented in the record.

Since the foregoing was written, the honorable Commissioner of Pensions informs the committee that the names of Thomas W. Howe and Pendleton L. Barker, both of the company of home guards commanded by Captain Bennight, and wounded in the same engagement in which claimant's husband was killed, are pensioners; and the Commissioner regards the question of service under the authority of the United States as sufficiently established. The only question in this case related to the fact of his death. The committee deem that so fully proven as to place it beyond question, and therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT :

[To accompany bill H. R. 3711.]

The Committee on Pensions, to whom was referred the petition of Martin D. Chandler, for a pension, having considered the same, submit the following report :

Martin D. Chandler enlisted as a private in Company A, First Regiment of Artillery, Eleventh Vermont Volunteers, on the 1st day of August, 1862; was discharged on the 27th day of February, 1863, by reason of surgeon's certificate of disability.

C. W. B. Kidder, surgeon for Eleventh Regiment Vermont Volunteers, states that the disability existed at the time of enlistment. Martin D. Chandler filed an application for invalid pension, (No. 41211,) which was rejected on the ground that the record-evidence discloses disability at the time of enlistment. On the contrary, S. S. Richards, first lieutenant of Company A, testifies that Chandler, while in line of duty, was taken with typhoid fever, followed by congestion of lungs, brought on by exposure while in camp-life, during January and February, 1863, and that prior thereto he was a strong, healthy man.

Charles H. Tenney testifies that he was examining-surgeon of Company A, Eleventh Vermont Regiment, and examined Martin D. Chandler after enlistment and before muster, and found him to be a healthy, sound, able-bodied man, free from consumption or lung-disease; and also testifies that in May, 1863, he was called upon to visit said Chandler, and found him suffering from empyema.

A. M. Wood, surgeon, also testifies that Martin D. Chandler, prior to enlistment, was a healthy man.

Testimony discloses that he is totally disabled, from disease of the lungs.

The committee are of opinion that the testimony establishes the fact that Chandler was a sound and healthy man at the time of enlistment, and that the disability results from disease contracted in the line of duty in the military service of the United States, and therefore recommend the passage of the House bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 1274.]

The Committee on Pensions, to whom was referred the petition of Urial Bundy, praying a pension, submit the following report:

Bundy was a private in Company F, Seventh Regiment Vermont Volunteers, mustered into service in 1862, and mustered out in 1863, after eleven months' service, and in consequence of inability to do duty.

He made application for a pension at an early day, and his case was pending many years, but finally rejected, because of the doubt whether he was sound when he was received as a soldier.

The claim is that while working in the canal opposite Vicksburgh, in the summer of 1862, he contracted a malarial fever and disease of the hip and spine, partially paralyzing him at the time, and so far as to unfit him for duty. In consequence of this he was sent to the hospital and then discharged. The evidence is very strong that he was a stout, healthy man when he entered the service and a mere wreck when he left it. Nothing seems to have stood in the way of the allowance of the claim by the Commissioner of Pensions, except two ugly certificates we proceed to notice.

The first is from the captain of the company, Ballard, and is dated February 4, 1862, at Pensacola. He certifies that Bundy had been unfit for duty for sixty days; that he was unwell when he enlisted, but had been lower since, so as to render him unfit for duty; and following this, Dr. Blanchard, the surgeon of the regiment, certifies that he had carefully examined Bundy and found him incapable of performing the duties of a soldier because of dysuria and spinal irritation, which probably existed to some extent prior to enlistment. Yet this same surgeon ten years later swears that the soldier was discharged on his certificate of disability by reason of some disease of the spine contracted in the service and in line of duty, and that he was a sound man when he enlisted. And Ballard, the captain who gave the above certificate, ten years later swore that he had known Bundy several years, and always knew him to be a perfectly healthy man until after working in the canal above spoken of, in the summer of 1862, when he was taken with a disease in the hip and spine; that he has never been well since, and he expresses his belief that his disease originated in performing the work above referred to.

It is quite evident that the oaths of these gentlemen are directly opposed to their certificates, and that the latter have the superior merit of having been given when the soldier's disability existed, and they knew, or thought they knew, the cause, when it originated.

But there is other evidence, fortunately.

Thus: Dr. Collam was an inspecting-surgeon, appointed by the gov-

ernor of Vermont, and he certifies that Bundy was examined by him, and accepted as free from disease and fully able to perform the duties of a soldier.

Furthermore, it is shown from the records of the adjutant and inspector general's office of Vermont that Bundy's name appears on the medical-inspection-rolls without any remark, and that he was mustered in as a man without any physical disability.

The second lieutenant of the company (Stearns) testifies to the soldier's health and strength when he was mustered into the service. Says he, "I considered him one of the soundest and hardiest men in the company before he went into that canal."

Burns, the sergeant of the company, testifies to the same effect, and is equally explicit.

There is other testimony tending to establish Bundy's good condition of health before entering the service, not to mention the unsworn representation of divers citizens of Vermont.

The committee, after weighing the evidence, have come to the conclusion that the soldier should be pensioned, and herewith report a bill and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 1275.]

The Committee on Pensions, to whom was referred the petition of Elmira E. Cravath, have considered the same, and submit the following report:

Petitioner is the widow of Isaac M. Cravath, late captain of Company G, Twelfth Regiment Michigan Volunteers, who enlisted October 26, 1861, and was mustered March 5, 1862, and resigned, on surgeon's certificate of disability, September 13, 1862. The certificate of the surgeon, Dr. Thomas R. Austin, shows that he was disqualified for military service "because of chronic enlargement and softening of the spleen and ulceration of the stomach, attended by great emaciation and prostration. That said disease has been of long standing, and he has been unfit for duty since the battle of Shiloh, on the 6th and 7th days of April last." The certificate is dated September 6, 1862. Colonel Graves, of the regiment, certifies that Captain Cravath became disabled from doing duty as a soldier on the 6th and 7th days of April, 1862, at the battle of Shiloh, having been attacked with typhoid fever and diarrhea, resulting from fatigue and exposure, from which he suffered severely until discharged; that he was in good health at the time he entered the service; that his constitution was completely broken down, with but little chance for his life.

J. B. Hull, examining-surgeon, under date of September 5, 1863, states that the soldier had typhoid fever in the Army, attended with disease of the bowels, which still continues. After his discharge from the Army, and while convalescent, he was attacked with chronic rheumatism in the form of sciatica, which still continues.

Dr. I. H. Bartholomew, examining-surgeon, under date of February 27, 1865, certifies: "the soldier's whole system is deranged from the effects of typhoid fever, especially his stomach and bowels. His stomach is tender, and imperfectly digests his food; his bowels are also tender; curable."

Claimant's husband, continuing disabled after his resignation, applied to be placed on the invalid-pension roll, and was admitted on the 16th of December, 1865, at \$20 per month, commencing September 13, 1862, which was paid to him regularly until the day of his death, which occurred May 4, 1872, from "chronic rheumatism and disease of the urinary organs," as testified by Dr. Ezra D. Burr, who attended Captain Cravath in his last illness, and for a period of nine months anterior.

Claimant filed her application with the Commissioner on the 11th October, 1872, believing her husband had died of disease contracted in the service. The Commissioner of Pensions came to a different conclu-

sion from the surgeons' certificates. It appears to have been suggested by claimant that Dr. Burr was ignorant of the character of the disease of which her husband died. She had employed him because he belonged to a different school of physicians, thinking he might possibly arrest the rapid decline of her husband, when her regular family physicians had failed. Upon this suggestion, the Commissioner of Pensions made inquiry of Dr. Hull, the examining-surgeon, as to the professional standing of Dr. Burr, and the doctor answers that "Burr is a homeopathist, and stands fair in his profession;" that "he has the reputation of being dishonest in his dealings with others, yet he is a member of one of our principal churches, and suffered to remain as such."

Claimant's application was rejected, on the ground that the soldier died of disease contracted after he left the service.

It does not appear that any medical authority has been consulted for the purpose of tracing the disease of which Captain Cravath died to its cause or origin. The committee hesitate to pronounce upon a question so intricate and lying outside of the profession and business of the members thereof, but, recurring to the testimony of Dr. Bartholomew, and having some knowledge of the popular notion respecting the dangerous character of typhoid fever, which, like measles, is likely to entail upon its subject many forms of disease after they have passed the first attack, Dr. Bartholomew states that the soldier's *whole system was deranged from the effects of typhoid fever, especially his stomach and bowels*; and Dr. Burr testifies that, in his opinion, the disease of which Captain Cravath died originated in the service, as stated by the captain himself.

Under these circumstances, considering the healthy condition of Captain Cravath before he entered the service, and the terrible exposure to which both officers and men were subjected for several days in the camp at Pittsburgh Landing, almost buried in mud and water, and the attacks of typhoid fever and diarrhea, your committee cannot resist the conclusion that claimant's husband died of disease contracted in the service; and therefore report the accompanying bill for her relief, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 60.]

The Committee on Pensions, to whom was referred the bill (H. R. 60) granting a pension to Josiah Brinard, submit the following report:

Josiah Brinard was enrolled as a private in Company E, Eighty-eighth Regiment Pennsylvania Volunteers, on the 19th day of September, 1861, for three years, and was honorably discharged June 30, 1865. Said Brinard, in his application to the Pension-Office for an invalid pension, states that he is now totally blind in consequence of injury to his eyes received in 1864 from sickness and exposure while a private in said company and regiment. The Commissioner of Pensions has rejected his claim. The records of the War Department fail to show that said soldier was disabled in any way at the time of his discharge. He states that he was never treated by any Army surgeon or in any hospital for diseased eyes. There is no medical evidence showing that the injury to his eye-sight was received while in the United States service, or that his eyes were injured at the time of his discharge, or that the injury to his eye-sight has remained continuous since his discharge. The committee, therefore, recommend that the bill be indefinitely postponed.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

REPORT:

[To accompany bill H. R. 1644.]

The Committee on Pensions, to whom was recommitted the bill (H. R. 1644) granting a pension to Hannah E. Currie, having again had the same under consideration and heard further evidence, report:

The only question in the case was the one of dependence of the mother upon the son at the time of his death and previous thereto, as will appear from the adverse report heretofore made in this case. The claim was adversely reported upon, specially for the reason that it appeared to the committee that the father and son had been, prior to enlistment of the latter as a soldier, partners in a small business in Ohio; and it was inferred by the committee that dependence could not very well exist, as it was supposed the partnership was one of some magnitude in point of capital and possibly of profits.

The evidence now submitted by Hon. W. S. Bundy shows satisfactorily that the business of the partnership was small, and that the son was mainly instrumental in supervising and conducting it; that after he enlisted it speedily went down and soon disappeared; that the son from the profits, such as they were, supported the family, and took nothing to himself; and that, after the son became a soldier, he made contributions from his earnings as a soldier to the support of his mother, who is now, and has been since the death of her son, in indigent circumstances, relying upon her own labors for only a tolerable support.

Upon this additional evidence, submitted in person and in writing, the committee have reconsidered their former conclusion upon the merits of the House bill, and now recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 78.]

The Committee on Pensions, to whom was referred the bill (H. R. 78) granting a pension to Salem P. Rose, submit the following report :

The evidence in this case shows that Salem P. Rose enlisted September 17, 1861, as a musician-private in Company F, Twenty-seventh Regiment of Massachusetts Volunteers, and was honorably discharged January 4, 1862, in consequence of disease contracted while in the service.

James H. Fowler, first lieutenant of Company F, of said regiment, testifies that said Rose contracted the disease for which he was discharged, in the line of his duty.

John W. Moore, major of said regiment, states that said Rose contracted the disease for which he was discharged, from exposure, while in the line of his duty as a member of Company F, Twenty-seventh Regiment.

L. F. Thayer, late captain of Company F, Twenty-seventh Regiment, testifies that said Rose, while in the line of his duty, on different marches and brigade and division drills, as general inspector of field-music, contracted catarrhal fever, which affected his sight in such a manner as to make him almost blind at the time of his discharge.

James Holland, M. D., and J. W. Johnson, M. D., both testify that said Rose was sound and healthy at the time of his enlistment, and that since his discharge he has been a continual sufferer from the disease contracted in service.

The committee therefore recommend that the bill do pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 2119.]

The Committee on Pensions, to whom was referred the bill (H. R. 2119) granting a pension to Elizabeth McCluney, have considered the same, and submit the following report:

The Committee on Invalid Pensions of the House of Representatives states the case of claimant, and the reasons for the passage of the bill, thus:

The petitioner is in receipt of a pension of \$30 per month, but as her husband, Commodore McCluney, died of disease contracted in service prior to 4th March, 1861, his case does not come within the act of July 14, 1862. The records show that Commodore McCluney died of disease contracted while he was in command of home squadron. He was detached from service in May, 1860, on account of disability. We think that as, by the laws in force prior to act of 1862, he would have been entitled to a pension of \$50 per month, taken in connection with his high rank in the service, the petitioner should receive the pension provided in the accompanying bill.

The committee recommend the passage of the accompanying bill, as the husband of petitioner held a high rank in the Navy, and the precedents are in her favor.

Your committee feel obliged to dissent from the propositions laid down in the foregoing report, both in respect of the law to which reference is made and the claim based upon the high rank of the commodore. No matter when the disease of which claimant's husband died was contracted, the law was intended to limit, and did limit, the pensions of widows of officers of the Army and Navy of the highest rank to \$30 per month, and very many who had previously been in the receipt of \$50 per month were cut down under the operation of the law to \$30; and to go beyond that limit now in any case of a widow's pension is a violation of the spirit of the law.

Your committee recommend the indefinite postponement of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3687.]

The Committee on Pensions, to whom was referred the bill (H. R. 3687) granting a pension to Victoria L. Brewster, have reconsidered the same, and make the following report :

The bill came into the Senate from the House of Representatives June 17, 1874, and was referred to the committee, and after a careful examination of the testimony and papers in the case, including those which had been filed in the Pension-Office, containing what information could be gleaned from the records of the Navy and War Departments, the result was reported to the Senate January 11, 1875, with the recommendation that the bill be indefinitely postponed. Whereupon, a reconsideration of the vote by which the report was adopted was moved and carried, and the bill recommitted. There was no suggestion of additional testimony, nor has any been filed in the case since. A letter by the claimant, addressed to the committee, has been filed with the papers, reiterating substantially what is contained in the original petition. There is no testimony in the case which does not show that both the husbands of claimant were simply employes of the Quartermaster's Department of the Army. They were both on transport steamers chartered by the Government—the first as captain of the steamer General Hamer, in the war with Mexico; and the latter as chief-engineer on the steamer Laurel Hill, in the late civil war. Both sickened and died while so engaged. The records show that neither one of the steamers belonged to the Navy, nor did Captain Sherwood or Engineer Brewster. Reference is made to the report made to the Senate January 11, 1875, where the case will be found fully considered; and the recommendation therein made is re-affirmed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill S. 1060.]

The Committee on Pensions, to whom was referred the petition of Margaret E. Johnson, have had the same under consideration, and submit the following report :

Claimant is the widow of Charles M. Johnson, who was in the employment of the Quartermaster's Department of the Army at Fort Pickens, Fla., as commander of the schooner called the Pickering, from August, 1861, until January 23, 1862, which vessel was used by the commander of the fort as a dispatch-boat between Pickens and Key West, and was supposed to have been lost at sea in a gale, about the date last mentioned. Neither the schooner nor any of those on board were ever afterward heard from.

Capt. and Bvt. Lieut. Col. Loomis L. Langdon, U. S. A., writing to the Commissioner of Pensions in regard to the possibility of procuring a pension for the claimant, states that in 1862, Johnson was the captain of a small schooner, called the Pickering, *which had been chartered by the Quartermaster's Department to carry the United States mail between Fort Pickens and Key West.* Other persons state that the schooner was seized by Commander Charles W. Pickering, U. S. N., on duty as light-house inspector, while she was engaged in illegal trade on the coast of Florida, and turned over to the Quartermaster's Department at Fort Pickens ; that claimant's husband, a resident of Key West, was employed to command the schooner.

There is no question about the service, for the records show that Captain Johnson was paid from August, 1861, until January 23, 1862, and there seems to be no doubt in the minds of the officers under whose charge or orders the vessel had been placed, that the schooner and all on board were lost in a terrible gale which occurred on the night of the 23d January, 1862. Capt. and Bvt. Lieut. Col. Loomis L. Langdon, U. S. A., states that he was invited by Captain Johnson to take passage on the schooner for Key West that night, but not deeming her safe, went on a larger schooner, the same night, and even in that came near being lost at sea.

It is thus seen that the testimony is meager and somewhat conflicting, but if it were otherwise the character of the service in which Captain Johnson was employed, however dangerous, would not entitle the claimant to a pension. This is another one of those cases pressed with great plausibility, as being identical in principle with the loss of an officer of the Navy, and as many think should be placed upon the same footing, in

the administration of the pension law, whereas the cases are wholly unlike. The one, the Government has undertaken to care for in case of accident or disease; the other, like any other citizen, must take care of himself. Undoubtedly in all such cases the parties seeking employment of the Government, do so because the pay is certain, and perhaps more lucrative than can be found elsewhere; besides, the service is voluntary. There is in fact no analogy in the cases.

The committee therefore recommend the indefinite postponement of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed. .

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 3706.]

The Committee on Pensions, to whom was referred the bill (H. R. 3706) granting a pension to Margaret H. Pittenger, have considered the same, and submit the following report :

Claimant is the mother of James D. Pittenger, late a private of Company I, Ninety-fifth New York Volunteers, who was mustered into the service January 3, 1862, and was discharged on surgeon's certificate of disability June 12, 1862, and died November 30, 1863, of chronic diarrhea.

Claimant applied for pension March 21, 1868, alleging that her said son died of disease contracted in the service, and her dependence upon him for support. The claim was rejected at the Pension-Office July 20, 1872, on the ground that the disease of which the soldier died was not contracted in the service. The hospital records show that he was treated for chronic bronchitis and hypertrophy of the heart, from April 18, 1862, until June 13, 1862, when he was discharged. The certificate of disability for discharge shows chronic bronchitis and hypertrophy of the heart. This is all the record evidence. Claimant and several of the near neighbors and intimate acquaintances of the soldier testify that he returned from the Army sick with diarrhea, and that he continued to grow worse until he died. Frederick Gilmore saw the soldier the day he arrived home from the hospital at Washington, D. C., and he had the disease then. Two soldiers of the company, acquaintances of the soldier, testify that he was sick at regimental hospital, Camp Kendall Green, Washington, D. C., in 1862; that he was suffering from measles and a severe cold, which settled on his lungs, and also suffering with diarrhea. They knew him to be a healthy man prior to enlisting. Dr. McPherson, who attended the soldier in his last illness, died himself soon after, so that no testimony could be obtained from him, other than the general understanding that the disease was chronic diarrhea.

The testimony touching the dependence of claimant upon her son at the date, before and since his enlistment, is full and satisfactory. The young man was nineteen years old when he went into the service, and had been working for wages, the greater portion of which he gave to the claimant from the year 1855, and the envelope of an express package containing \$40 sent by the soldier while in the Army to claimant. She had four younger children, three daughters and a son, and had lost her husband in 1853. It is in proof that she owns a small house worth \$700 to \$1,000, and under mortgage with interest for \$600. One of the daughters is mar-

ried and the other two remain with her and assist in her support by their labor.

There is some conflict in the testimony as to the time when the soldier was attacked with diarrhea, or rather there is no record evidence among the papers in regard to the treatment in hospital at Kendall Green Camp, as testified to by two of his comrades. The records of that hospital may be missing; it is the case in a great number of regimental hospitals. But it is fully established that he had the disease when he arrived at home from Washington, only one day from the hospital, and is also shown that he was a sound, healthy young man when he left home. The committee therefore recommend the passage of the bill.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 1073.]

The Committee on Claims, to whom was referred the bill (S. 1073,) for the relief of John M. Dorsey and William Shepard, submit the following report :

The bill directs the payment to John M. Dorsey of \$9,088, and to William Shepard \$3,788, in full settlement for beef and supplies furnished the troops by Wallace, Dorsey & Shepard and by S. B. Wallace, in quelling the Indian disturbances in the Territory of Utah, now the State of Nevada, in the year 1860.

The bill is based on the petition of Dorsey and Shepard to Congress, which is sworn to by Dorsey, and is substantially as follows in its statements: That in the spring of 1860 they were engaged in business in said Territory, when great alarm existed among the inhabitants of the western portions of Utah in consequence of the depredations of the Pi-Ute Indians; that an irregular force of about one hundred of the best citizens was organized, and armed with such weapons as they could procure, and went out from Virginia and Carson Cities to chastise the Indians; that the expedition fell into ambush and about sixty of the citizens, including Major Ormsby, their commander, were killed and the others dispersed; that great excitement and alarm followed among the citizens, and it was feared the neighboring towns would be attacked, the Indians having assembled in large force. There were no troops, arms, or government nearer than Salt Lake, five or six hundred miles distant. Under these circumstances the governor of California, and the United States officer in command of the Department of the Pacific, sent forward, to Virginia City, arms and ammunition in charge of proper officers. Two or three hundred volunteers also came along with the United States troops. The citizens of Virginia City and its vicinity united with these volunteers and regular troops and organized a regiment, and selected Col. John C. Hays to take command. The troops, thus organized and commanded, marched against the Indians and after some severe fighting conquered a peace.

The memorial further states that upon the organization of this force it was without quartermaster or commissary supplies, and in order to obtain them, Richard N. Snowden was appointed commissary, and as such entered into a verbal contract with said Wallace and the petitioners to furnish certain supplies; that in conformity therewith the three named furnished them to the amount of \$12,868, which was certified to and vouchers therefor issued by said Snowden as commissary.

One for the sum of \$1,528 was issued to S. B. Wallace; one to John M. Dorsey, S. B. Wallace, and William Shepard for \$5,050, and a third one to the three last-named parties for \$6,190; that Wallace died in 1862, but before his death assigned to Dorsey all his right, title, and interest in all of the certified accounts; that Dorsey is the just owner of the first-mentioned account (that for \$1,528) and of two-thirds of the other two, amounting in the aggregate to \$9,088, and that Shepard is the owner of one-third of the last two, amounting to \$3,780. The petitioners close by saying they furnished these supplies for the purposes stated in good faith, believing that they would be paid in a short time, and that the prices charged were low for the time, places, and circumstances.

At the suggestion of the subcommittee having this bill in charge, Mr. Dorsey has appended an affidavit to the memorial, and in this he swears that he is one of the claimants therein; that he knows all the statements made therein are true of his own knowledge; that the supplies were actually furnished as stated; that the amount claimed is justly due, the charges reasonable, and that no part thereof has been paid him or any of the other parties; that the amount of money subscribed by the citizens of Virginia City and vicinity had been exhausted, and this fact was the reason and necessity for Colonel Hays and Colonel Snowden making the verbal contract with claimants to furnish said supplies, and had they not, in conjunction with Jordan and McPike, furnished the necessary supplies, the expedition must have failed.

Mr. Dorsey further states in explanation of the long delay in bringing the claim before Congress, that it had been duly filed in the War Department, which had finally ruled that there was no law which authorized its payment; that it was then put into the hands of agents, who did nothing; that neither of the claimants possessed the pecuniary means to come to Washington; that about the year 1865 the triplicate vouchers were placed in the hands of Hon. D. R. Ashley, then a member of Congress from Nevada, to present to Congress, but he lost all the papers; that circumstances and sickness in his family prevented him from coming to Washington until recently and from employing agents. He closes by saying much of his evidence is among the papers in the claim of McPike, which was allowed at the last session of Congress and has been paid.

The following papers are furnished by the War Department in regard to these claims, and sufficiently explain themselves:

The United States of America to S. B. Wallace,

Dr.

To supplies furnished the expedition, under command of Colonel Jack Hays, against the Pi-Ute Indians, in the Territory of Utah, as follows:

To 600 pounds flour, at 70 cents	\$420 00
To 500 pounds sugar, at 60 cents	300 00
To 400 pounds barley, at 55 cents	220 00
To 125 pounds California bacon, at 80 cents	100 00
To 100 pounds Java coffee, at 65 cents	65 00
To 510 pounds fresh beef, at 30 cents	153 00
To twenty-two (22) days' service of the pack-mules, at \$3.50 per day	231 00
To 3 camp-kettles, at \$3	9 00
To 3 frying-pans, at \$2	6 00
To 2 dozen tin-cups, at \$6	12 00
To 2 dozen tin-plates, at \$3	6 00
To 1 dozen sheath-knives, at \$6	6 00

Total 1,528 00

I certify, on honor, that the above amount of provisions were furnished the expedition under command of Col. Jack Hays, against the Pi-Ute Indians in the Territory of Utah, by S. B. Wallace; that the prices charged therefor are just and reasonable, and that the same were received by me, and were necessary for public service.

Dated at Pyramid Lake, June 3, 1860.

RICHARD A. SNOWDEN,
Commissary Utah Volunteers.

The United States of America to John M. Dorsey, S. B. Wallace, and William Shepard, Dr.

To supplies furnished the expedition under command of Col. Jack Hays, against the Pi-Ute Indians in the Territory of Utah, as follows:

To 800 pounds bacon, at 80 cents	\$640 00
To 600 pounds coffee, at 45 cents	270 00
To 480 pounds soda-crackers, at 80 cents	384 00
To 30 gallons sirup, at \$5	150 00
To 10 gallons pickles, at \$5	50 00
To 200 pounds table-salt, at 80 cents	160 00
To 400 pounds rice, at 45 cents	180 00
To 1,000 pounds Orleans sugar, at 51 cents	510 00
To 400 pounds beans, at 45 cents	180 00
To 200 pounds soap, at 50 cents	100 00
To 5,000 pounds flour, at 45 cents	2,250 00
To 400 pounds barley, at 44 cents	176 00
Total	5,050 00

I certify, on honor, that the above amount of provisions was actually furnished the expedition under command of Col. Jack Hays, against the Pi-Ute Indians in Utah Territory; that the prices charged therefor by Dorsey, Wallace, and Shepard are just and reasonable, and that the same were necessary for the public service.

Dated at Carson River, June 10, 1860.

RICHARD A. SNOWDEN,
Commissary Utah Volunteers.

The United States of America to Jno. M. Dorsey, S. B. Wallace, and William Shepard, Dr.

To supplies furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians in the Territory of Utah, as follows:

To 3,500 pounds of flour, at 70 cents	\$2,450 00
To 400 pounds barley, at 55 cents	220 00
To 1,100 pounds sugar, at 60 cents	660 00
To 600 pounds Java coffee, at 70 cents	420 00
To 10 gallons sirup, at \$7	70 00
To 20 sacks (5 pounds each) table-salt, at \$3	60 00
To 7,700 pounds fresh beef, at 30 cents	2,310 00
	6,190 00

I certify on honor that the above amount of provisions was actually furnished the expedition under command of Col. Jack Hays against the Pi-Ute Indians in the Territory of Utah; that the prices charged therefor by Dorsey, Wallace and Shepard, are just and reasonable, and that the same were necessary for public service.

Dated at Pyramid Lake, June 3, 1860.

RICH. A. SNOWDEN,
Commissary Utah Volunteers.

WAR DEPARTMENT, December 10, 1869.

The Secretary of War, in compliance with the request of the Committee on Claims of the United State Senate, dated April 1, 1869, has the honor to furnish all the information in possession of the War Department relative to the war against the Pah-Utah Indians, in the year 1860, and to return to said committee the list of claims against the United States arising out of said war.

WM. W. BELKNAP,
Secretary of War.

List of claims for the war against the Pah-Utah Indians, 1862.

No. 1.	S. B. Wallace.....	\$1,528 00
2.	Dorsey, Wallace & Sheppard	6,190 00
3.	Dorsey, Wallace & Sheppard	5,150 00
4.	Jordan & McPike	3,093 50
5.	Jordan & McPike.....	9,900 00
6.	Jordan & McPike.....	5,040 00
7.	Jordan & McPike.....	1,440 00
8.	John Jordah.....	360 00
9.	C. S. Strong, treasurer, &c	1,105 00
10.	C. S. Strong, treasurer, &c	1,000 00
11.	Jesse Mayhew	200 00
		<hr/>
		35,006 50

I certify that the foregoing are correct copies of papers on file with settlement No. 8711, June 19, 1874, in favor of John McPike.

A. M. GANGEWER,
Chief Clerk, Third Auditor's Office.

From the foregoing papers it will be seen that Richard A. Snowden, the commissary of the Utah volunteers, certifies that S. B. Wallace furnished the expedition with supplies to the amount of \$1,528; that the prices charged were just and reasonable, and that the supplies were received by him and were necessary for public service; and that in like manner, Dorsey, Wallace & Shepard furnished the supplies mentioned in the two other vouchers—one calling for \$5,050, the other for \$6,190.

The list of claims seems to be a summary of all the supplies furnished for the expedition, as well by the parties now before Congress as others not now here, amounting in the aggregate to \$35,006.50.

W. T. Shepard made an affidavit on 10th December last, that he, associated with John M. Dorsey and S. S. Wallace, furnished in the year 1860 certain supplies for the subsistence of the troops in Utah Territory, during that year, who, under the command of Col. John C. Hays, were engaged in suppressing Indian hostilities, for which supplies he and the said Dorsey were about to apply to Congress for payment, and that in the year 1861, Wallace, for a valuable consideration paid to him by Dorsey, sold, assigned, and transferred by written assignment his equal one-third interest in and to said claim and demand to the said Dorsey, who was the legal owner and holder thereof, and entitled to receive Wallace's share.

This written assignment is not produced, but Dorsey verbally alleges it has been lost, that Wallace died insolvent, and no administrator was ever appointed to administer upon his estate.

It appears by this affidavit that there is an error in the bill in giving the names of Wallace and Shepard; that Wallace's name was S. S. Wallace, and Shepeard's W. F. Shepard.

John C. Hays makes affidavit that he was commander of the volunteer force at the Indian outbreak which occurred in 1860, and that he believes that the said Dorsey, Shepard & Wallace faithfully performed the verbal contract made with him as commander and Richard M. Snowden as commissary, and that they furnished flour, bacon, salt, &c., for the use of the volunteers under his command, and that they should have been paid long ago.

A. E. Shiras, assistant commissary-general of subsistence, writes to J. M. Latta, attorney at Washington, under date of April 1, 1867, in relation to these claims, which had been filed in the Commissary-General's Office, as follows:

"No records in this Office or in that of the Adjutant-General show any authorization by the Government of the regiment or command for which the stores appear to have been procured, or that any law has ever been enacted which would authorize the payment of the accounts."

These references exhaust all that is before the committee in this case in the way of papers.

It appears, however, that on June 17, 1874, an act was passed directing the Secretary of the Treasury to pay the sum of \$19,473.50 to John M. McPike, in full settlement for beef and supplies furnished the troops by Jordan & McPike in quelling the Indian disturbances in the Territory of Utah, now the State of Nevada, in 1860. (See United States Statutes, page 40 of private acts, chapter 296.)

There appears to the committee no good reason to doubt the existence of the disturbances as alleged in the memorial, and the necessity for the supplies furnished the forces engaged in the expedition against the Indians. As to the amount, kind, and value of these supplies there is no evidence, leaving out of question the affidavit of Dorsey, beyond the certificate of the gentleman who exercised the functions of commissary on the occasion. His affidavit is not furnished, nor is any reason given for its absence. The affidavit of Colonel Hays, while it refers to these bills, does not state amounts or prices. Nor does the affidavit of Shepard. These, however, are the identical accounts filed in the War Department, and Dorsey swears to their correctness, to his ownership of Wallace's portion, and that no part of the account has been paid.

Senate Report No. 155, made in the case of Jordan & McPike, has been shown to the committee, which was the basis of the private act above quoted. That case differs from this in the fact that there was a written contract made between Jordan & McPike of the one part, and Snowden of the other, fixing the price of the beef to be furnished. The affidavit of Colonel Hays furnished in that case was more full than in this, showing the urgency of the occasion for organizing this military force, and the economy with which the expedition was concluded. He says the volunteers neither asked nor received any pay.

The good character and business standing of Dorsey are indorsed by one of the Senators from Nevada.

The committee have come to the conclusion to recommend the passage of the bill with two verbal amendments, on the strength of the evidence as above set forth, and because of the former action of Congress in allowing a similar claim made by Jordan & McPike.

S. Rep. 649—2

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 11, 1875.—Ordered to be printed.

Mr. GOLDTHWAITE submitted the following

REPORT:

[To accompany bill S. 831.]

The Committee on Claims, to whom was referred the bill (S. 831) for the relief of D. R. Haggard, have had the same under consideration and submit the following report:

That it appears from the evidence on file with the committee that, in the year 1861, the claimant was mustered into the service of the United States as colonel of the Fifth Regiment of Kentucky Volunteers, and in the fall of that year left Cumberland County, leaving his farm near Burkesville, in said county; that, after having fought Zollicoffer's and Buckner's cavalry during the winter of 1861 and 1862, he was ordered to Tennessee with his regiment, and remained there fighting the rebels until the suppression of the insurrection; that, during his absence, his farm was occupied by various regiments of the Federal forces as camping-grounds, and the entire fencing and timber of his farm was, during its occupation, consumed as fuel; that all of the forage, cattle, hogs, tobacco, and everything he had on the farm was also consumed by the Federal forces during his absence, and that no compensation has ever been made him; that, owing to his absence in the service, no vouchers or certificates were obtained for any of the property taken and consumed, and that he has been unable to ascertain the names of the officers and organizations by whom it was used; that it was not until his return from the service in 1865 he found his farm desolated—not only his timber, forage, &c., had been consumed, but many of his buildings destroyed. His farm included two hundred and eighty-six acres, sixty of which was heavily timbered and very valuable, owing to the scarcity of timber in that neighborhood. The wood on sixty acres was estimated at sixty cords per acre, and was selling in the neighborhood at \$4 per cord, but is only estimated at \$1.50.

The bill of particulars, as set forth in his petition, are—

3,206 panels of fencing, 28,854 rails and posts, worth	\$2,083 90
60 acres of timber, 3,600 cords of wood, at \$1.50	5,400 00
Hogs, 7,990 pounds pork, at 8 cents	639 20
Beef cattle, 1,360 pounds, at 12½ cents	170 00
2,200 pounds of tobacco, at 50 cents	1,100 00
1 corn-crib	50 00
Stable	50 00
Total	9,493 10

The evidence which establishes the facts as stated is the claimant himself, Claywell, his overseer and agent during his absence, whose

testimony is corroborated by four other witnesses, who are testified to be credible persons and entitled to full faith and credit by the clerk of Cumberland County court.

The committee is satisfied that the facts as stated by the witnesses are substantially true. It has no doubt that the articles mentioned were taken and consumed by the various regiments which were from time to time camped upon the farm during the absence of the claimant, and the supplies thus obtained materially contributed to their comfort.

The difficulty in allowing this claim is the want of vouchers from the proper officers, showing that the property consumed was taken for the use of the Army. Your committee, however, being satisfied that the articles which were taken were used for the benefit of the Army, and that the want of evidence, in not being able to obtain the proper vouchers, or even the names of the officers by whose orders the articles were taken, was owing to the absence of the claimant in the field fighting the battles of his country. Had he been at home upon his farm, if he could not have prevented the seizure of his property, he could at least have obtained the vouchers which would have entitled him to compensation for his property.

Looking at all the circumstances, your committee are of the opinion that the claimant should be allowed the sum of \$4,000, and report the accompanying bill as an amendment in the nature of a substitute for the bill referred to the committee, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1875.—Ordered to be printed.

Mr. BAYARD submitted the following

REPORT:

[To accompany bill S. 832.]

The Committee on Private Land-Claims, to whom was referred the bill (S. 832) providing for the adjudication and issue of patents in mission land cases in the State of Oregon and the Territories of Washington, Idaho, and Montana, have considered the same and recommend that the same be amended as follows and passed :

First. Strike out the first section of the bill.

Second. In line eight of the present section two, after the word "therefrom" insert "or under any law thereof or treaty stipulation."

Third. Strike out the word "try" and "adjudge" in the thirteenth line, and insert the word "and" in lieu of the word "try."

Fourth. Strike out the words "the practice, rules, and laws pertaining in said courts in the trial of other equity cases," and insert in lieu thereof the words "law and equity."

Fifth. After the word "claims" in line five of the present section four insert "or adverse claims aforesaid."

Sixth. Renumber the sections of the bill so that the present section two shall be section one, and the other sections be consecutively numbered 2, 3, 4, 5, and 6.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1875.— Ordered to be printed.

Mr. PRATT submitted the following

REPORT

[To accompany bill S 1093.]

The Committee on Public Lands, to whom was referred the bill (S. 1093) for the relief of Reuben Goodrich, submit the following report: —

Mr. Goodrich was receiver during 1866 and part of 1867. Morgan Bates was register. On October 22, 1866, one Lyman G. Wilcox was appointed and commissioned by President Johnson register of the land-office in place of Mr. Bates, and the latter was duly notified by the Commissioner of the General Land-Office of Mr. Wilcox's appointment, and was directed to deliver to him the books and papers of the office whenever the appointee should have executed his official bond. This was done, and formal demand of the office was made by Wilcox on December 1, 1866. Bates refused the demand, and continued to act as register until the 15th day of May, 1867, when he surrendered the same to Wilcox, who had been confirmed by the Senate. His official acts during this period were recognized. He was in possession of the office, performed its various duties, and his superiors treated his acts as valid.

The petitioner was receiver during all this time, and regularly paid to Mr. Bates the salary and commissions of a register from December 1, 1866, to May 15, 1867. He had never been officially notified of Mr. Wilcox's appointment, and had no alternative but to recognize as official the acts of the actual incumbent of the office. The Secretary of the Interior disallowed so much of Mr. Goodrich's account for disbursements as included the salary and commissions paid Bates during the period stated, which was \$1,377.71.

The following letter of the Commissioner of the General Land-Office to the petitioner, dated April 21, 1869, will best exhibit the grounds on which the petitioner seeks relief:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
April 21, 1869.

SIR: In answer to your inquiry, per note of this date, I have to state, first, from the records of this Office, it appears that in the adjustment of your accounts for the first and second quarters of 1867, as disbursing agent at Traverse City, Mich., there were disallowed and rejected from your credit on account of payments made to the late register, Morgan Bates, esq., for salary, commissions, and fees, accruing from October 1, 1866, to May 16, 1867, items amounting in the aggregate to \$1,377.71, pursuant to the ruling of the late Secretary of the Interior, Hon. O. H. Browning, communicated to this Office per letter of March 3, 1868, viz:

Amount paid said Bates on account of salary, commissions, and fees accruing from the 1st to 31st of December, 1866.....	\$252 71
On account of salary, commissions, and fees, accruing from January 1 to March 4, 1867	516 66
And salary and commissions from April 1 to May 16, 1867.....	375 00
To which add	233 34

The amount previously rejected on account of salary, commissions, and fees, which was claimed from the 3d to 31st of March, 1867, as a pro rata of the maximum for the first quarter 1867, disallowed in view of the act of March 2, 1867, known as the civil office tenure law, also falling within the purview of the ruling of the Department referred to above, \$233.34. Copies of the vouchers for the payments, filed with your accounts, are herewith inclosed.

2d. In answer to your further inquiry, I state that no allowance has been made to any person, as register at Traverse City, during the period alluded to as above.

3d. Lyman G. Wilcox, register at Traverse City, Mich., confirmed April 8, 1867, commission dated April 10, 1867, receipted to late register for the archives of this Office May 15, 1867.

Very respectfully, your obedient servant,

JOS. S. WILSON,
Commissioner.

REUBEN GOODRICH, Esq.,
Present.

In this same connection the committee submit another letter of the same officer to the Secretary of the Interior, dated April 8, 1872:

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 8, 1872.

SIR: I have the honor to, return the letter, date 3d instant, from the Hon. D. D. Pratt, and by you referred to this Office, and have to state—

1st. That no claim for compensation has been recognized, nor has any allowance been made to Lyman G. Wilcox, as register of the land-office at Traverse City, Mich., from December 1 to May 15, 1867.

He was commissioned temporarily as register of that office October 22, 1866, and qualified on the 25th of the same month. The then incumbent, Morgan Bates, was notified by letter from this Office of October 22 of the appointment of Mr. Wilcox as register, but we find no evidence of the receiver, Reuben Goodrich, having been officially advised of that fact.

2d. The said Lyman G. Wilcox appears to have been confirmed by the Senate April 8, 1867, was permanently commissioned on the 10th of the same month, and qualified on the 4th of May following.

3d. He receipted to Morgan Bates for the books and papers of the register's office on May 15, 1867, and up to that date the entries permitted by Bates appear to have been recognized by this Office.

4th. The payments made to Morgan Bates by the receiver, Reuben Goodrich, and disallowed under the provisions of the act of March 2, 1867, known as the civil office tenure law, and also in pursuance of the order of Mr. Secretary Browning, under date March 3, 1868, amounted in the aggregate to \$1,377.71, as will be seen from the following statement:

I am, sir, very respectfully, &c.,

W. W. CURTIS,
Acting Commissioner.

HON. C. DELANO,
Secretary of the Interior.

Disallowed by order of Secretary, per letter March 3, 1868.

Amount paid Morgan Bates as register: salary and commissions from 1st to 31st December, 1866	\$252 71
And salary and commissions from January 1 to March 4, 1867.....	516 66
	<hr/>
	\$769 37
Disallowed under act March 2, 1867, known as the civil office tenure act, and also pursuant to Secretary's order of March, 1868, viz: amount paid Morgan Bates, as salary and commissions from 4th to 31st March, 1867	233 34
And as salary and commissions from April 1 to May 15, 1867.....	375 00
	<hr/>
	608 34
	<hr/>
	1,377 71

The present Secretary of the Interior differs from his predecessor in opinion, and, in a letter to the committee, says that, in his judgment, the claim is an equitable one and should be allowed by Congress. The letter is as follows :

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 11, 1872.

SIR: Your letter of the 3d instant, calling for further information concerning the claim of Reuben Goodrich, late receiver of public moneys at Traverse City, Michigan, was referred to the Commissioner of the General Land-Office. I have the honor to inclose herewith a copy of his report of the 8th instant, received to-day, on the subject. It contains answers to all your inquiries, except the fourth. Diligent search has failed to find a record of the letter addressed on the 21st April, 1869, to Mr. Goodrich by Mr. Wilson, then Commissioner of the General Land-Office, though no doubt is entertained of the copy, transmitted with your letter and returned herewith, being a true copy. The original was probably handed to Mr. Goodrich in person before record of it was made.

In answer to your request for an expression of opinion by the Department as to the propriety of paying the claim, I have the honor to state that it is, in my judgment, an equitable one that should be allowed by Congress,

I am, sir, very respectfully, your obedient servant,

B. R. COWEN,
Acting Secretary.

Hon. D. D. PRATT,
United States Senate.

The committee are of opinion that the disallowance by Secretary Browning of the petitioner's account for moneys paid Bates on account of salary and commissions while acting as register was wrongful, for these reasons:

First. Bates was in possession of the office under color of title. No steps were taken by Wilcox to remove him. No official notification of the latter's appointment seems to have been given Goodrich.

Second. Bates performed all and singular the duties of the office up to the 15th of May, 1867, and his superiors have recognized his official acts during this entire period, and received the benefit of his labors.

Third. It cannot be pretended that Wilcox earned the salary and commissions during this period. He performed no duties. He could not be paid by the Government for work done by another in actual possession of the office under claim of title. His remedy is by suit against Bates for damages for detaining the office from him, if, in his opinion, the detainer was unlawful.

The committee are all of opinion that Goodrich did right under the circumstances in paying to Bates his salary and commissions. This part of his account has been disallowed, and he having made good to the Government the sums paid Bates, is entitled to have the money refunded.

The committee accordingly report herewith a bill for the relief of the petitioner, and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1875.—Ordered to be printed.

Mr. INGALLS submitted the following

REPORT:

[To accompany bill H. R. 3713.]

The Committee on Pensions, to whom was referred the bill H. R. 3713, having had the same under consideration, submit the following report :

Upon the 14th January, 1875, this bill was reported adversely and indefinitely postponed.

On the 21st of the same month this action was reconsidered by a vote of the Senate, and the bill recommitted for further action.

The claim was rejected upon the ground that Major Cooper died from the effects of a wound inflicted by his own hand during an attack of *delirium tremens*.

Additional evidence has been submitted ; and, upon a review of all the testimony, the committee have reached the conclusion that the allegation of the manner in which Major Cooper came to his death is unfounded. The habits of his life, the location of the wound of which he died, and all the attendant circumstances are inconsistent with the theory of suicide. Without presenting in detail the entire evidence, the committee reverse their previous action and recommend unanimously that the bill do pass.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1875.—Ordered to be printed.

Mr. WRIGHT submitted the following

REPORT:

[To accompany bill H. R. 2170.]

On the 29th day of May, 1867, Timothy D. Crook, of Nebraska City, Nebr., entered into a contract with Capt. J. H. Belcher, assistant quartermaster, United States Army, to deliver at Fort Dodge, Kansas, between the 1st day of August and the 1st day of December, 1867, one thousand two hundred and seventy tons of good merchantable prairie-hay, for which he was to receive the sum of \$10.93 per ton.

One of the conditions of the contract was that, in case Mr. Crook failed to furnish the amount of hay stipulated, the Government should have power to retain such amount of money as should indemnify it for any and all defects and deficiencies in the execution of the contract on the part of Mr. Crook.

It was further stipulated that the Government should pay for the hay on vouchers to be issued on the delivery of each 200 tons, in such funds as the Government might provide for that purpose; but it was provided that the Government should retain 10 per cent. of the contract-price, and might retain all, until the whole amount of the hay was delivered.

It appears from the evidence that Mr. Crook proceeded on or about the 1st day of August to Fort Dodge with a competent force of men, teams, and machines, for the purpose of cutting and delivering the hay. He did deliver, it appears, 800 tons of hay, and asks for relief for his failure to deliver the remaining 470 tons for the following reasons:

At or about the time of his arrival, it is said that the cholera was raging with great violence at Fort Dodge, and that many deaths occurred. Mr. Crook's men were many of them taken sick, and four of them died. This greatly demoralized his working-force, and a number of his men left. It also appears that about the time of the arrival of Mr. Crook's party there were demonstrations of hostility on the part of the Indians. Mr. Crook applied to the officer in command at the fort for an escort or guard of soldiers, which could not be furnished on account of sickness which was prevailing among the soldiers. In consequence the work of cutting and delivering the hay proceeded under constant apprehensions of attack. A portion of the party had to be detached to stand guard, and the men who were running the machines refused to work during the absence of the hauling men and teams, but would assemble and prepare for defense.

On the 6th of September they were attacked by Indians; one man was killed, several mules stolen, and the machines broken.

The committee are of the opinion, from a careful examination of the evidence, that Mr. Crook made every reasonable effort to comply with the terms of the contract, and was only prevented from doing so by obstacles which could not be foreseen, and which were entirely beyond his control.

It appears from the papers submitted to the committee that Mr. Crook received from the quartermaster at Fort Dodge four vouchers for the receipt of 800 tons of hay—200 tons each—each voucher \$2,186. Three of these vouchers were, it appears, paid, less 10 per cent. which was retained under the terms of the contract. The voucher unpaid, to wit, \$2,186, and the 10 per cent. retained on previous vouchers, to wit, \$655.80, in all, \$2,841.80, is the amount Mr. Crook claims is in equity and justice due him from the Government.

It appears from the papers in the case that the Government has an unsatisfied claim against Mr. Crook. By the terms of the contract Mr. Crook was bound to make good any loss to the Government by reason of any failure on his part to comply with the terms of the contract. In consequence of his failure to furnish the required amount of hay, the Government was compelled to purchase during the early summer of the following year 85 tons of hay, at \$35 per ton, amounting to \$2,975. Deduct contract-

price, \$926.50, makes the loss to the Government from Mr. Crook's failure to furnish the stipulated amount of hay, \$2,048.50. Unquestionably it was the duty of the Department to charge Mr. Crook with that sum, and if there was any reason to believe that his failure to fulfill and perform his contract was due to any negligence on his part, or lack of energetic, faithful effort to do his duty, it would be very wrong even for Congress to pass an act to relieve him from the failure to fulfill his contract. But believing Mr. Crook's failure was owing to unavoidable causes, we think it would be too much like the Jew exacting the pound of flesh for the Government to insist on the strict letter of the bargain.

The vouchers issued to Mr. Crook from time to time by the United States Quartermaster were signed in blank by Crook and sold in the ordinary course of business to D. I. McCann & Co., of Nebraska City, Nebr. McCann & Co. set up the claim that these vouchers are commercial paper, and as such, as soon as issued, it is obligatory on the Government to pay them. This question was submitted to the Department, and by it fully considered and decided adversely to the claim. We see no reason to question the correctness of this conclusion. McCann & Co. can, therefore, have secured no rights by the transfer of these vouchers by Crook to them than the rights possessed by Crook. As the question as to McCann & Co.'s rights has been pertinaciously insisted on, and has been carefully considered by Assistant Judge-Advocate-General W. M. Dunn, his decision, as approved by the Secretary of War, is appended to this report.

The committee reach this conclusion: That in consequence of the almost insurmountable obstacles in the way of Mr. Crook fulfilling his contract, he should not be held responsible for the loss to the Government caused by reason of his failure; and that, in justice and equity, he should be paid the full contract-price for the hay he delivered. That on that contract he is entitled to receive the sum of \$2,841.60.

This conclusion is in accordance with the opinion of the Quartermaster-General. The committee, therefore, report back the bill, and recommend that it pass.

WAR DEPARTMENT, WASHINGTON CITY, May 5, 1870.

In the matter of the claim of D. J. McCann & Co., for payment of a certain voucher issued by an officer of the Quartermaster's Department to T. D. Crook.

This voucher is for 200 tons of hay, at \$10.93 per ton, amounting to \$2,186, delivered at Fort Dodge, Kansas, September 26, 1867, under contract made between Capt. J. H. Belcher, assistant quartermaster, and T. D. Crook, dated May 22, 1867.

After the voucher was duly certified and approved, the usual receipt attached to such vouchers was signed in blank by Crook, and the voucher was, in the ordinary course of business, sold by Crook to Messrs. D. J. McCann & Co., of Nebraska City, Nebr.

No question is raised as to the delivery of the hay in quantity, as set forth in the voucher, or in quality, as required by the contract.

The Quartermaster's Department has refused payment on the ground that subsequent deliveries which, by the terms of the contract, were to have been made by the contractor, Crook, were not made, and that his default in this respect occasioned greater loss to the Government than the amount of the voucher in question; and it satisfactorily appears that this statement is true. The claimants reply that the default was occasioned by the prevalence of cholera and Indian troubles in that locality at the time the hay should have been cut, &c. To which the Quartermaster's Department replies that it is not for the executive department to excuse the non-fulfillment of contracts, but to enforce them; in which it is again right.

Two provisions of the contract on which the hay specified in the voucher was delivered are of controlling importance in the consideration of this case:

"First. That if default shall be made by the said party of the second part in the time of the delivery of the said hay, or in any of the provisions of this contract, the said party of the first part shall have power to supply any deficiency that may exist by purchasing in open market, or in such manner as he may elect, and the said party of the second part shall be charged with the difference in cost."

Such a default did occur, and it became necessary in consequence thereof for the Government to supply the deficiency by a purchase of 85 tons of hay in open market, which cost the Government \$35 per ton, amounting to \$2,975.

To this it is replied that the contractor was not in default when this voucher was issued, and attention is called to the following provision of the contract:

"The said party of the first part hereby agrees, for and on behalf of the United States of America, to pay, or cause to be paid, to the said party of the second part, the sum of \$10.93 for each and every ton of 2,000 pounds of hay delivered and accepted in accordance with the terms of this contract, as follows, to wit: On the delivery and acceptance of each 200 tons of hay on vouchers issued by the officer of the Quartermaster's Department at Fort Dodge, Kansas, in such funds as may be provided by the Government for that purpose, or as soon as the funds shall be received for that purpose."

It is claimed that under the foregoing stipulation, an installment of 200 tons having been duly delivered, the obligation to pay became absolute. But there is a proviso to the stipulation, which is the second of the two provisions deemed of controlling importance in the consideration of this case, as follows;

"Provided, however, That the said party of the first part shall have the power to retain any or all, and shall retain 10 per cent. of the money to be paid as aforesaid until the completion of this contract according to the terms, intent, and meaning thereof."

Thus it appears that by an express provision of the contract the Government was not bound to pay a cent to the contractor until the contract, as an entirety, was fulfilled. He could not, therefore, have pretended to have a legal demand on the Government for hay delivered, when the damages to the Government on account of his subsequent defaults amounted to more than the balance due him on his deliveries.

The final position assumed by the attorneys for the claimants, and the one which they press with great earnestness is, that this voucher must be regarded as commercial paper, and they make the following quotation from the decision of the Supreme Court of the United States in the case of the "Floyd acceptances:"

"It must be taken as settled that when the United States became a party to what is called commercial paper, by which is meant that class of paper which is transferable by indorsement or delivery, and between private parties is exempt in the hands of innocent holders from inquiry into the circumstances under which it was put in circulation, they are bound in any court to whose jurisdiction they submit by the same principles that govern individuals in their relations to such paper."

This voucher is not commercial paper. It is not such a paper as between private parties would be transferable by indorsement or delivery, so as to enable the holder to bring a suit in his own name. It is neither a note nor a bill of exchange. It is simply a certificate by a proper public officer that such an amount of supplies has been delivered at such a time and place, on a contract with the Government of such a date.

The blank receipt attached thereto to be signed by the contractor is not a necessary part of the paper, as it would be just as valid against the Government if the receipt were not there. The receipt could be written on the certificate when the amount therein specified should be paid.

Nor is this paper, even in the hands of an innocent holder, exempt from inquiry into the circumstances under which it was issued. If such were the case, the provisions of the contract last quoted would be of no value to the Government, as the contractor might immediately on the receipt of a voucher transfer it, and thus, if the argument of counsel be correct, compel a payment to be made notwithstanding the above important provision.

This voucher, with the blank receipt thereto attached, is such a transfer of the right to receive the amount named in the voucher as enables the holders to claim the amount from the Government, as against the contractor, and to receive it, provided the Government has no sufficient offset against either the contractor or the holder of the voucher. If the Government has such an offset, it has the right to assert it.

Such vouchers as the one on which this claim is based, though not commercial paper, were during the war, and to a considerable extent have since been, articles of commerce.

They were dealt in as public securities, and but few contractors could have fulfilled their contracts had they not been able to raise money by the sale or hypothecation of vouchers received from time to time during the progress of the fulfillment of their contract.

The case under consideration, like many others that have come to my knowledge, is one of great hardship upon the purchaser, but the rule of *"credat emptor"* applies in this as in other purchases.

It is respectfully recommended that this claim be rejected.

W. M. DUNN,
Assistant Judge-Advocate-General.

Approved.

WM. W. BELKNAP.
Secretary of War.

Claim of Timothy D. Crook, (H. R. 2170.)

The Committee on Claims in the Senate, while concurring in the finding of facts as set out in the foregoing report of the House committee, are unable to concur in the conclusion that the obstacles in the way of the performance of the contract on the part of Mr. Crook are so "insurmountable," or that the efforts made to comply with the same are of such a character as to relieve him from his liability to respond to the Government for the damages sustained by his non-performance. [To

our minds it is only a case where he entered into a contract known to be surrounded with dangers, made his bid, and entered upon the fulfillment of his contract with the knowledge that he would probably meet with obstacles, which he did meet with, and now asks that he shall have as full pay as if he had fully performed. He certainly is not legally entitled to the full contract-price, nor do we think he is equitably so entitled. In our opinion, all he is entitled to is the difference between the amount paid for the 85 tons of hay, (\$35 per ton, which seems to have been reasonable,) less what he would have been entitled to if he had delivered the same, (at \$10.93 per ton,) when deducted from the amount of the outstanding and refused voucher, and the 10 per cent. withheld upon the prior vouchers; and this would make the account stand thus:

Voucher	\$2,186 00	
Ten per cent. on the three prior vouchers withheld under the terms of the contract.....	655 80	
		<hr/> 2,841 80
Deduct amount paid by the Government for 85 tons hay	\$2,975 00	
Less contract-price.....	929 05	
		<hr/> 2,045 95
And we have balance due claimant.....	795 85	

For this amount he should be paid; and we recommend that the House bill be so amended, and, as thus amended, that it do pass.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1875.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill H. R. 3268.]

The Committee on Claims, to whom was referred the bill (H. R. 3268) entitled "An act for the relief of John N. Reed," have had the same under consideration, and make this report:

Upon examination of the facts of the case the committee are of opinion that the case ought to be referred to the Court of Claims, and report a substitute for the House bill, providing for such reference, and recommend that the same pass.

○

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1875.—Ordered to be printed.

Mr. PEASE submitted the following

REPORT:

[To accompany bill S. 1302.]

The Committee on Claims, to whom was referred the petition of Hiram W. Love, praying for compensation for his cotton-crop destroyed by the military forces of the United States during the late war of the rebellion, beg leave to submit the following report:

A written report upon this claim was submitted to the Senate, January 30, 1874, as follows:

It appears that the papers in this case were presented in the Senate at the first session of the Forty-first Congress, and were then referred to this committee, and, on the 9th of April, 1870, the committee made a written report thereon, which is as follows:

"On the 8th day of March, 1864, the petitioner made the following agreement with William P. Mellen, supervising special agent of the Treasury Department, to wit:

"LEASE.

"This agreement, made this 8th day of March, 1864, by and between the United States of America, by William P. Mellen, supervising special agent of the Treasury Department, in the first agency, and Hiram W. Love, of Iowa City, Johnson County, in the State of Iowa, witnesseth that, in pursuance of instructions from the Secretary of the Treasury of the United States, and of orders of the Secretary of War, concerning the leasing of abandoned houses, tenements, and lands in States declared in insurrection, the said agent, for and in behalf of the United States, agrees, upon the terms hereinafter contained, to lease to the said Hiram W. Love, from the date hereof to the first day of January, 1865, the following-described lands and premises, viz: Lying and being in the county of Desha, and State of Arkansas, all the tillable land contained in a tract bounded by a line drawn from the naval station at the mouth of White River to the Arkansas River cut-off; thence to the mouth of the cut-off at White River; thence down White River to the Mississippi; thence down the Mississippi River to the naval station. Said tract is more particularly known as the Old Field at the Cumby Monument, and said to contain fifty acres of land, more or less.

"The said Hiram W. Love, having taken and filed the prescribed oath herein to annexed, hereby agrees to pay to the said agent, as rent for the above-described lands and premises, one cent per pound on all cotton, and a proportionate sum upon all other products raised by him; which payment shall be made as provided for and in pursuance of the rules and regulations for leasing abandoned plantations and employing freedmen, hereunto annexed; and in all cases where freed labor is employed, the said Hiram W. Love further agrees to contribute or pay to the said agent the sum of one cent per pound on all cotton, and a proportionate sum upon all other products grown on said premises, for the purposes set forth in Section V of said rules and regulations.

"And the said Hiram W. Love further agrees that during the continuance of this lease he will keep employed one No. 1 man, or the equivalent thereto in men, women, or children, as classified in said rules, for each twelve acres of tillable land occupied by him under this lease, it being hereby agreed that said premises contain fifty acres, and require four No. 1 hands, or their equivalent in other grades.

"And the said lessee further agrees to furnish to the persons employed suitable tenements, with separate quarters for families who may desire the same; and that to

each family of four or more persons he will set apart, for their sole use and benefit, not less than one acre of ground suitable for garden-purposes, and fuel sufficient for the use and comfort of each family, all of which shall be without charge to such persons or the Government.

"Said lessee hereby further agrees that no freed person shall be employed on the said premises except under contract made with such person; and no contract for freed labor shall be valid without the sanction of the superintendent of the Freedman's Home Farm, who shall in each case designate the proportion of each grade or sex to be employed.

"Said lessee further agrees to pay to each freed person so employed according to the terms set out and established in Section X of the said rules and regulations.

"Said lessee further agrees to pay at least one-half the amount of the monthly wages during each and every month, said payment to be in cash, food, clothing, or other necessities, at the option of the laborer; all food, clothing, or other articles so furnished to be of good quality, and not to be charged at more than ten per cent. advance on wholesale invoice prices at Saint Louis, Chicago, Cincinnati, or Louisville.

"It is further agreed that the parties to this contract shall be subject to the observance of the rules and regulations hereto subjoined.

[SEAL.]
[SEAL.]

"H. W. LOVE.

"WILLIAM P. MELLEN,

"Per T. C. CALLICOTT,

"Assistant Special Agent Treasury Department."

"By virtue of said agreement the petitioner entered upon said lands in the month of April, 1864, which, upon actual survey, were found to contain 28.28 acres; and also upon a smaller lot, containing from six to ten acres, situate about one-fourth of a mile from said larger tract. It appears that said petitioner did plant cotton in both of said parcels of land, and by his proper care and attention the cotton thereon promised a good and productive crop, and that said crop had so far matured as to be ready for picking, and the petitioner had made his arrangements for picking the same, when, on the 8th day of September, 1864, Brigadier-General Dennis, commanding some fifteen thousand United States troops, arrived with said forces at the mouth of White River, and, after examining the vicinity to select a proper place of encampment for said forces, issued the following order:

"[Special Orders No. 19.]

"HEADQUARTERS UNITED STATES FORCES,
"Mouth of White River, Arkansas, September 8, 1864.

"III. There being no ground in this vicinity suitable for an encampment, excepting this field of growing cotton, claimed as private property by Maj. Hiram W. Love, the troops of this command will at once disembark and go into camp on this aforesaid field, the same being necessary for military purposes.

"By order of Brig. Gen. E. S. Dennis.

"WM. E. KUHN,
"Acting Assistant Adjutant-General."

"I certify, on honor, that the foregoing is a true and correct copy of the original order, as appears upon records on file in this office.

"WM. E. KUHN,
"Acting Assistant Adjutant-General."

"By virtue of said order the said forces were disembarked and encamped on the said larger field of cotton, notwithstanding the remonstrances of the petitioner through his authorized agents.

"The result was that the cotton on the said field of eighty-eight acres was principally destroyed. One of the witnesses, substantially sustained by many others, testifies that, 'immediately upon occupying said land the troops went to work and pulled up the cotton-plants to clear the ground for camping purposes, and scattered it around in piles so as to be out of their way, and trampled upon and beat it down with wagons, horses, and artillery; that in a short time the whole crop of cotton growing on said parcel of land, containing about ninety acres, was wholly destroyed and rendered worthless and of no value, and was wholly lost to said Love, except in this, a small amount of cotton was picked from the scattering stocks and from the piles of stocks pulled up by the troops; but the amount thus obtained was very small and of little value; that, in truth and in fact, the entire crop of cotton growing on said parcel of land, containing about ninety acres, was substantially wholly and entirely destroyed, and rendered worthless and of no value; and that the said Love, by reason of the occupancy of said parcel of land by said troops of the United States, as above stated, was injured and damaged to the full value of the cotton-crop growing thereon in its then condition.'

"The actual amount secured as 'picked from the scattering stocks and from the piles pulled up by the troops' was 3,896 pounds.

"The claimant has filed the affidavits of many witnesses, of evident intelligence and good moral character, in relation to the amount of cotton which the said eighty-eight acres would have produced if he had been suffered to pick and bale it; several of whom were persons who had experience and skill in raising cotton.

"Their estimates are as follows:

"Eli Nellums, one and three-fourths bales of ginned cotton, of five hundred pounds to the bale, per acre.

"Jacob Graham, the same.

"George W. Morehead, an aggregate of two hundred bales of five hundred pounds each.

"John A. Hogns, one and one-half to two bales per acre, of five hundred pounds.

"Marion W. Magill, the same.

"Thomas E. Dugan, from one and three fourths to two bales of five hundred pounds to the acre.

"The value of cotton at that time, according to the proof, was \$1.75 per pound, delivered on the bank of the river.

"The highest estimate of cost for ginning and baling is \$3 per bale; and at the price of \$1.75 per pound, there would have been a profit on the bagging and rope necessary to bale the cotton.

"Thus stands the case on the proof before the committee. Estimating the crop of cotton on the said eighty-eight acres at one and three-fourths bales per acre, the aggregate to be one hundred and fifty-four bales of five hundred pounds each, making seventy-seven thousand pounds of cotton, which, valued at \$1.75 per pound, would make the sum of

Deducting 3,896 pounds saved.....	\$6, 118	\$134, 750
And the ginning and baling.....	462	

6, 580

Would leave a balance of 128, 170

"Such is the result of the evidence in this case, looking to the value of claimant's cotton-crop, if he had been allowed to pick, gin, and sell it. It is palpable that this result, based wholly on *ex-parte* affidavits, is unreliable and extravagant. But a majority of the committee are of opinion that no relief should be granted to the claimant on this basis; that Congress should not undertake to ascertain, and pay for, the speculative advantages which he might have derived from his contract if he had not been interrupted in its execution; but that he should be indemnified for his actual expenses in preparing the ground and planting and cultivating the cotton, including a reasonable compensation for his own time and labor bestowed thereon.

"Waiving the question of the Government's liability for the net profits which the claimant would have realized if he had been permitted to pick, gin, and sell his cotton, the committee all agree that he should be indemnified for his actual expenses. The evidence shows that the claimant in good faith, under authority of law, rented the land aforesaid from the supervising agent of the Treasury, and planted the same with cotton, and cultivated it, according to the stipulations of the contract, until he was forcibly ejected from the premises by the military order aforesaid, and his crop destroyed by the troops of the United States encamped thereon by regular competent military authority. Certainly, the claimant should be indemnified to the extent of his actual expenses incurred in the faithful execution of a contract with the Government, which the Government, by its own officers, forcibly prevented him from fully executing, and from which, if he had been permitted fully to enjoy the benefits of it, he would, beyond all question, have realized a large amount of net profits over and above his expenditures.

"But the claimant, proceeding upon the hypothesis that the measure of the Government's liability was the net profits which he would have made if he had not been ejected from the premises, and his crop destroyed as aforesaid, has furnished no evidence of his actual expenses in planting and cultivating his crop, upon which the committee could make any reliable estimate thereof.

"The committee, therefore, report back the papers to the Senate, and recommend that the claimant have leave to withdraw them, and to take evidence of said expenses, if he sees proper to do so, with a view to a future application for relief in that behalf."

Your committee further state that they concur in the foregoing statement of the history and facts of claimant's case except that they think that the estimate therein of the amount of cotton that would have been gathered from the 88 acres of land is extravagant, and the price per pound therein fixed more than it would have sold for.

Your committee further state that, since the making of the foregoing report of April 9, 1870, the claimant has filed an account of his actual expenditures in this behalf,

accompanied by his own affidavit and some additional evidence. In his said affidavit he says :

"That deponent's books, containing an account of the moneys expended by him in raising a crop of cotton in the year 1864, on certain lands leased by him from the Government of the United States, situated at the mouth of White River, in the State of Arkansas, (which crop of cotton was destroyed by the military forces of the United States, in September, 1864, by camping thereon,) were destroyed by fire on a steamboat on the Mississippi River in the year 1865, so that he cannot make out a full and complete account of all moneys expended by him in the planting and cultivation of said crop of cotton, but that the following statement, made up from memoranda and receipts now in his possession, and from memory, is as full and accurate an account of such expenditures and expenses in raising the said crop of cotton as he is now able to give; and that the same is true and correct according to the best of his knowledge and belief."

In the account accompanying said affidavit is set forth in detail the several items of expense incurred by claimant in clearing off the land; in providing materials and implements; in paying for labor; and generally in planting, cultivating, and raising the crop of cotton which was destroyed as above set forth. The items of expense charged in said account amount in the aggregate to the sum of \$24,341.75. This transaction, it will be recollected, was in the year 1864, when three dollars, in the currency of the times, (United States notes,) were worth little more than one dollar in gold. These charges are, no doubt, made with reference to the paper-currency of the time. Yet, notwithstanding the depreciated condition of the currency at that date, your committee look upon them as exorbitant; and while admitting that it is clearly shown from the amount of work done, materials furnished, &c., that claimant must have expended considerable sums of money in preparing for, and cultivating, his crop of cotton, the committee, nevertheless, think that a much less sum than that claimed will cover his actual expenses.

This report elicited much discussion, and the case was recommitted to this committee for further consideration and report.

Your committee, after further examination of the case, in view of the equities involved and the difficulties in arriving at a proper adjudication of the claim on account of the character of the testimony in being entirely *ex parte*, are of the opinion that the case should undergo a judicial investigation, and accordingly recommend its reference to the Court of Claims, and to that end submit the accompanying bill.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1875.—Ordered to be printed.

Mr. PRATT, from the Committee on Pensions, submitted the following

REPORT :

The Committee on Pensions, to whom was referred the petition of Andrew J. Keeler, a citizen of Maine, praying to be allowed a pension, submit the following report :

The case, as made by the petition and proofs, is that Keeler had been in the naval service as a seaman during the late war, and was discharged on the 18th of August, 1865. He then entered the internal-revenue service, but in what capacity is not shown.

On the 5th of July, 1869, the anniversary of the Declaration of Independence was celebrated by the crew on board the United States revenue-cutter Dobbin, in Castine Harbor. Keeler was engaged in ramming down the cartridge when the cannon exploded prematurely, killing one man and causing the loss of his (Keeler's) right eye and three fingers of his left hand.

This is the case made. He supposes himself equitably entitled to a pension because he was in the employ of the United States at the time, in assisting to collect its revenues, and was doing a patriotic service in firing a national salute. He does not claim that he was in the military or naval service when his misfortune occurred, nor should we have supposed him to be in the line of his duty as an internal-revenue officer, if such he was, but for the affidavit of Joseph S. Stevens, M. D., who swears that he was. We are not able to see it in that light, and, with becoming deference to the opinion of this M. D., the committee ask to be discharged from the further consideration of the petition.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1875.—Ordered to be printed.

Mr. EDMUNDS, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary respectfully report :

That on the 15th of December, 1874, the Senate adopted the following resolution :

Resolved, That the Committee on the Judiciary be instructed to inquire into the extent and meaning of the act of June 22, 1874, entitled "An act conferring jurisdiction upon the criminal court of the District of Columbia, and for other purposes," and particularly whether under or by its provisions persons charged with or indicted for libel or other crime in the said District of Columbia can be brought from a State or other place within Federal jurisdiction to said District, to answer therefor; and, also, whether said act has any application to prosecution or indictment for the crime of libel in any case, and report thereon.

In obedience to this resolution the committee have carefully examined the subject.

The act of June 22, 1874, entitled "An act conferring jurisdiction upon the criminal court of the District of Columbia, and for other purposes," is in the following words:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the criminal court of the District of Columbia shall have jurisdiction of all crimes and misdemeanors committed in said District not lawfully triable in any other court, and which are required by law to be prosecuted by indictment or information.

SEC. 2. That the provisions of the thirty-third section of the judiciary act of seventeen hundred and eighty-nine (1789) shall apply to courts created by act of Congress in the District of Columbia.

It having been considered that the provision in the act of June 17, 1870, establishing a police court in the District of Columbia, which conferred exclusive jurisdiction upon it of "all offenses against the United States not deemed capital or otherwise infamous," and which did not provide for trials by jury, were in violation of that clause in the Constitution which declares that "the trial of all crimes, except in cases of impeachment, shall be by jury," the first section of the act above quoted was passed in order to prevent a failure of justice in respect of a large class of crimes committed in the District, by giving the criminal court, with its jury, jurisdiction of such of them as under the Constitution could not, for the reason already stated, lawfully be tried in the police court.

By the second and only other part of the act in question it is declared "that the provisions of the thirty-third section of the judiciary act of seventeen hundred and eighty-nine (1789) shall apply to courts created by act of Congress in the District of Columbia."

The thirty-third section of the act of 1789 referred to is in the following words:

"And be it further enacted, That for any crime or offense against the United States the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found, agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offense. And copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case: which recognizances the magistrate before whom the examination shall be may require on pain of imprisonment; and if such commitment of the offender or the witnesses shall be in a district other than that in which the offense is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute, a warrant for the removal of the offender and the witnesses, or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except when the punishment may be death, in which case it shall not be admitted but by the Supreme or a circuit court, or by a justice of the Supreme Court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offense, and of the evidence and the usages of law. And if a person committed by a justice of the Supreme or a judge of a district court for an offense not punishable with death, shall afterwards procure bail, and there be no judge of the United States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such State."

As the act of June 22, 1874, mentioned in the resolution of the Senate, only extended to the courts of the District of Columbia the provisions of the section just quoted, it follows that the inquiry is reduced to the simple question, what are the provisions of that section which has been the law of the land for more than eighty years?

They are simple and clear.

1st. The crime or offense upon which the section acts must be one against the United States.

2d. The offender can only be arrested upon the warrant of a court or judge of the State or district where he may be found. No court or judge can issue a warrant to arrest the offender in any other State or district.

3d. If the offender be thus arrested for an offense against the United States, and be brought before the court or judge of the district where he was arrested, he may be held for trial before such court of the United States as, by the act of September 24, 1789, had cognizance of the offense.

4th. The only courts having cognizance of any offense or case by that act are:

1. The Supreme Court of the United States.

2. The circuit courts of the United States established in the various States.

3. The district courts of the United States established in the various States.

No State court and no territorial court has by that act any jurisdiction whatever for the trial of any cause, civil or criminal.

5th. If it appears, when the offender is thus arrested and brought before the court or judge of the district of his arrest, that the offense was committed in some other district, it is made the duty of the judge to cause him to be removed to the district in which the offense was committed; the Constitution requiring all criminal trials to be in the district in which the offense was committed. It is scarcely necessary to say that the districts mentioned are the judicial districts of the United States created by acts of Congress in the several States.

6th. The section gives no power to a court or judge to send for or bring a person charged with crime *into* his district or jurisdiction under any circumstances. The authority given in this respect is only to remove the person charged *from* the district in the cases named.

The sum of the matter, therefore, is, that the second section of the act of June 22, 1874, confers upon the courts of the District of Columbia the power to arrest offenders found in the District who are charged with crime committed within the District, and hold them for trial, (which was the law before,) and to arrest offenders found in the District who have committed crimes against the United States in some judicial district of the United States, and to send them to such district for trial. And that is all. No person can be brought into the District of Columbia under it, either for libel or any other crime. The committee are of opinion that both the sections of the act are necessary and proper, and in perfect accordance with the principles of justice and the course of civilized jurisprudence. Without provisions of this character the District of Columbia would be an asylum for offenders committing crimes against the laws of the United States and escaping hither.

It only remains to report, as directed by the resolution of the Senate, "whether said act has any application to prosecution or indictment for the crime of libel in any case."

We are of opinion that, as before stated, no person charged with the crime of libel can be brought into the District of Columbia under it, for no person can be brought here under it for any crime whatever.

And it is equally plain that no person charged with the crime of libel in any other district or place in the United States can be arrested here and sent to such district or place under it, for—

1st. Libel is not a crime against the laws of the United States in any of the States, so that no case could arise in which a court or judge in the District of Columbia could be called upon to arrest a person here and send him to any State for trial for libel.

It should be here observed that the jurisdiction of the courts of the United States in criminal cases is confined to offenses created by the statutes of the United States.

No offense at common law is indictable or triable in the courts of the United States. This was early determined by the Supreme Court of the United States, and is the settled law of the land. (Public Statutes; United States *vs.* Hudson, 7 Cranch, p. 32; Bishop's Criminal Law, sec. 199.)

2d. If in any Territory libel is a crime by its laws, and if such laws could be held for such purposes to be the laws of the United States, the act under consideration provides no aid in sending a person from this District to such Territory, for the 33d section of the act of 1789 has no application whatever to the Territories.

The result is that the act of June 22, 1874, is not, in our opinion, obnoxious to any criticism; and, in respect of the crime of libel, it confers no power either to bring a person charged with it into the District of Columbia or send him out of it.

GEO. F. EDMUNDS.
ROSCOE CONKLING.
FRDK. T. FRELINGHUYSEN.
GEO. G. WRIGHT.
A. G. THURMAN.
J. W. STEVENSON.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1875.—Ordered to be printed.

Mr. FREELINGHUYSEN, from the Committee on Foreign Relations, submitted the following

REPORT:

The Committee on Foreign Relations, to whom was referred the petition and claim of George W. Lake for \$35,000, to indemnify him for alleged damage inflicted on him by Willie P. Mangum, United States consul in Nagasaki, and Charles E. De Long, United States minister, &c., at Japan, have had the same under consideration, and ask leave to submit the following report:

On September 12, 1860, George W. Lake was registered at the United States consulate, at Nagasaki, and, up to the time of his departure from Japan, in 1871, was engaged in business there. It is from complications arising in his business affairs, and judicial determination of these disputes, that Mr. Lake considers himself wronged, and for which alleged wrongs he asks redress and compensation in the sum stated.

In his petition Mr. Lake only states his case, and refers Congress to the files of the State Department for documentary proof to substantiate it. The committee requested the Department to furnish such evidence in this case as might be in its possession, and that evidence was before the committee. A careful examination of these papers establishes the following matters of fact:

On September 30, 1866, H. Fogg & Co., of Shanghai, China, auctioneers, sold, for account of one J. S. Baron, a flour-mill. The purchasers were C. R. Simmons, R. J. McCaslin, and H. Fogg & Co., and they owned each a third of the mill. The property was shipped to Nagasaki, and was under the control there of McCaslin, who agreed with Geo. W. Lake (1) that Lake & Co. should erect the mill on a lot of G. W. Lake at Namonihua, and then either sell it or operate it for the joint advantage of himself and the other owners; (2) that such moneys as might be necessary to erect and start the mill were to be advanced by Lake, and refunded to him in case McCaslin effected a sale; and (3) that if the mill were sold by mutual consent, "then each to stand one-half of the profit or loss." No outside party was to have anything to do with the mill unless it was agreeable to Lake.

A quarrel soon arose between Lake and McCaslin, and both attempted to sell the mill, under the provisions of the agreement just referred to. Willie P. Mangum, then consul of the United States at Nagasaki, ordered Lake to desist from any attempt to sell or remove the mill until the owners, or parties claiming ownership, could be heard from. In the mean time Mr. McCaslin (against whose efforts to sell Mangum does not appear to have interposed any objection) sold the property to Adrian & Co., a Belgian firm, who bought it for removal to Osaka for certain

Japanese. Mangum swears—in Lake's action against him subsequently—that he advised and urged the partners, Lake and McCaslin, to keep their disputes out of court, and at last succeeded in inducing them to submit the whole subject to an arbitration. This they did under date of April 7, 1869, and the decision of the board was to be final and without appeal.

Adrian & Co. began the removal of the machinery during the sittings of the arbitrators. Lake opposed this removal until his claim was settled. He went to the mill and took the key away from the workmen, and warned them to stop. Adrian & Co. appealed to the United States consular court to enforce the agreement which they claimed existed between Lake and themselves, which permitted the removal of the property purchased by them, and also for damages caused by the delay occasioned by Lake taking away the key and retaining it. Mangum decided this case in favor of the plaintiffs, adjudging damages against Lake in the sum of \$400, this being the cost to the plaintiffs for the charter of the vessel on which the machinery was being loaded, at \$40 per day, for ten days' delay caused by act of Lake. The court also ordered Lake to deliver up the key to Adrian & Co. He refused to do so, and was punished by fine and imprisonment for contempt. He still refused, and was again punished in like penalties for persistent contempt of court. The order was then complied with, and the work on the removal of the mill proceeded.

The arbitrators finished their work, and provided for the distribution of the net sum produced by the sale of the mill, \$5,500. Of this amount \$2,971.57 was awarded to Lake for expenses incurred in putting up the mill, in conformity with the article of agreement, McCaslin having effected the sale. The residue, \$2,528.43, was ordered to be divided, equally, between Lake and McCaslin.

Nearly two months after this award Adrian & Co. received the purchase-money from their clients at Osaka, and notified Mangum of its receipt. Mangum instructed them to pay over to Lake the specific sum awarded him for outlay on the property, and to hold the balance, \$2,528.47, pending the investigation of a claim, preferred against it by Fogg & Co., of Shanghai, through their agent and attorney, J. F. Twombly. McCaslin made an amicable settlement with Fogg & Co., by paying \$400 in satisfaction of their claim as against him.

As Lake, the petitioner, does not complain of its non-payment, the assumption is justified that it was divided in conformity with the award of the arbitrators.

Mr. Lake now complained to the Department of State that he had been wronged by the consul, Mr. Mangum. Mr. J. C. B. Davis, Assistant Secretary of State, replies "that consuls are not exempt from prosecution because of their official position, but may be proceeded against like other persons when within reach of judicial powers." Mr. Fish addresses Mr. Mangum that Hon. B. F. Butler has submitted papers, on behalf of Geo. W. Lake, alleging that the consul had injured his constituent. Mr. Fish, in his reply to Mr. Butler, says that certain papers requested in the case are not a part of the records of the Department, and adds that, if they were, they could have no bearing on the case, for the tenth section of the act of June 22, 1860, makes the judgment of consuls, with the aid of assessors, in civil suits final.

Being stopped by law from an appeal from the decision of the consular court, Mr. Lake sued Mr. Mangum before the ministerial court, Hon. Charles E. De Long, United States minister, &c., for damages, to wit: 1. For loss caused to said Lake by the abuse of his powers on the

part of the consul, \$1,500; 2. For false imprisonment, (Mr. Dent, United States marshal, being made a party defendant to this suit,) \$5,000; 3. Libel alleged to be contained in an official dispatch from Mr. Mangum to the Hon. J. C. Bancroft Davis, of the Department of State. In these several suits Mangum demurred to the jurisdiction of the court. Mr. De Long was in doubt as to his proper course; for he had heard a case which he describes as similar to these, and the Department had neither approved nor disapproved of his course. Besides, the new consular regulations received in Japan in the mean time say distinctly: "The power to commence civil and criminal proceedings is vested in consular officers exclusively." The minister therefore asked for instructions, and refused to proceed until these reached him.

The governor made a formal demand for Lake's expulsion under the seventh article of the treaty between the United States and Japan, for improper conduct toward a woman named Toka. Mangum issued the order, giving Lake three months to wind up his affairs and go. Mr. Lake complained that his suits could not be tried in the short time allowed him; that the delay in their hearing was not of his seeking; and that it was beyond his control. On this O. O. Sheppard, United States chargé d'affaires, suspended the order for his expulsion—as to time—for an indefinite period, and the Secretary of State approved both the order expelling Lake issued by Mangum, and its suspension by Sheppard. Lake failed to take advantage of Sheppard's order. He claims now that he did not know of its existence, and yet admits that he did not obey the order of expulsion, although he knew that disobedience subjected him to loss and punishment. He was ordered to leave in three months after July 7, 1871, to wit, on October 7, 1871. By his own admission, contained in the petition now under consideration, he did not leave Japan until the 23d of October, 1871. Leaving, he appointed his brother Edward his attorney to attend to his affairs. De Long heard the suits against Mangum. The decision was adverse to Lake, and Lake appealed to the United States district court of California. Of this appeal the committee have no knowledge from anything submitted for their consideration.

Mr. Lake now appeals to Congress for relief and indemnity in the sum of \$35,000. It is not perceived by the committee that the United States is liable for claims against its officers after these have been submitted to the judgment of the courts, or at any time, while such officers are amenable to law for acts which are supposed to render them liable to prosecution and penalties. Nor can they admit the principle which an approval of Mr. Lake's claim would go far to establish. The courts are open to Mr. Lake. One has passed upon his causes. And even now the committee are left under the impression that they are pending in another court.

From this review of the testimony before them, the committee have arrived at the conclusion that the claim of George W. Lake is baseless, and that his petition should be denied. They therefore urge its rejection.

UNITED STATES MINISTERIAL COURT IN AND FOR THE EMPIRE OF JAPAN.

GEORGE WILKINS LAKE, PLAINTIFF, }
versus } Action No. 1 for the recovery of
 WILLIE P. MANGUM, DEFENDANT. } damages in the sum of \$1,500.

STATEMENT OF THE CASE.

In this action the plaintiff charges that in the month of April, 1869, one McCaslin and himself entered into an agreement to refer certain differences then existing between them respecting their ownership in a certain flouring-mill, situated at Nagasaki, in Japan, to Messrs. J. U. Smith and Johannes Brunier, as arbitrators, empowering them (in the event of their being unable to agree) to select a third person to act with them as an umpire.

That said arbitrators were unable to agree, and did select one John Maltby to act as such umpire.

That whilst this arbitration was proceeding, and before any award had been made, this defendant willfully and maliciously, and with the intent to injure this plaintiff, did, as United States consul at Nagasaki, interfere with and prevent an award being made by these arbitrators by wrongfully and unlawfully issuing an order to said umpire directing him to withhold giving an award; which order was obeyed, and thus for a long time the award was delayed, the plaintiff kept out of his money; and further, that this action caused him, the plaintiff, to be sued in consular court, whereby the plaintiff was caused damage and loss in the sum of fifteen hundred dollars.

The answer of defendant, Mangum, admits the making of the order complained of, &c., but denies that this action was wrongful or malicious, or that plaintiff was thereby caused any loss or damage whatever.

OPINION.

From the evidence adduced in this action, it appears that this petitioner and McCaslin were the joint owners and tenants in common of a flouring-mill, purchased in Shanghai, brought to Nagasaki, and there erected on land belonging to and in the possession of the plaintiff.

That this mill was conducted for some time by this plaintiff, when some trouble and misunderstanding arose between McCaslin and himself about its business, and also regarding the amount of their respective interests in the mill itself.

Some talk about commencing legal proceedings was indulged in by the parties, but at the instance of this defendant the agreement to submit their differences to arbitrators was entered into. Under this agreement the plaintiff selected Mr. Smith as his arbitrator, and McCaslin chose Mr. Brunier, who being at first unable to agree, selected Mr. Maltby as umpire. The reason why these arbitrators could not at first agree it appears was because a certain written agreement entered into between McCaslin and Lake governing their partnership relations had been lost or mislaid, and for a time could not be produced. The date of the agreement to submit to an arbitration is April 7, 1869. It bears the signature of both Lake and McCaslin, and also of this defendant, Mangum, as a witness thereto. It fairly appears that this was not only entered into by the advice of defendant Mangum, but that it was the understanding and intention of all parties that the whole pro-

ceeding should be under the general jurisdiction and control of the consul. This is shown by the fact that the agreement was lodged with him, and applications were made to him from time to time by this plaintiff, as well as others in the interest, for his official assistance and instruction.

In November, 1868, this defendant addressed a note to this plaintiff, directing him not to sell or remove the mill until certain parties who claimed to be interested in it could be communicated with. In explanation of this action on his part, the defendant testifies that he did this because he had been advised of a claim made by H. Fogg & Co. of Shanghai to an interest in the property. It may well be questioned whether, upon mere information of such a nature, this defendant had any authority to take such action, giving it the force of an order; but this is a matter immaterial now to consider, inasmuch as it is not assigned in the petition, nor was it proven during the trial, that this action of defendant caused the plaintiff any loss or damage, or in fact that this plaintiff paid any attention to the direction at all, but, on the contrary, it seems that he did not, as on the same day that he entered into the agreement for an arbitration he authorized McCaslin to sell the mill, which McCaslin at once did, through the house of Adrian & Co., at Nagasaki, for the sum of five thousand five hundred dollars, payable when delivered at Osaka by Messrs. Adrian & Co. The proceeds derived from the sale to be held by Messrs. Adrian & Co. in trust for Lake and McCaslin, to be paid by them as directed by the judgment to be rendered by the arbitrators. This sale and arrangement as to the delivery of the mill and disbursement of the proceeds this plaintiff notified this defendant Mangum about, and advised him that he had assented thereto.

On the 15th of April following this the defendant addressed a note to Maltby, the umpire, informing him "that H. Fogg & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject." The making of this order by defendant is the subject of plaintiff's complaint in this action, and hence it deserves special consideration.

Whether it had any effect at all upon Maltby in preventing him from deciding the case is not proven, except by the evidence of defendant Mangum, who testifies that Maltby obeyed it, that is, that he did not render any decision; but there is not a particle of evidence offered to show what his decision would have been if he had rendered one. It is certainly as fairly presumable that his decision would have been unfavorable to plaintiff as it is that it would have been favorable; hence this action of this defendant may have been beneficial to plaintiff instead of injurious. It seems to be clear that, if this arbitration proceeding was by the parties or the law placed under the supervision and control of this defendant, he had a perfect right to stay this action temporarily for any reason that seemed to him to be a sufficient one. If, on the contrary, he had no such legal jurisdiction over them, his note to the umpire was without any legal force or binding effect, and the umpire remained as fully authorized to proceed as if no such note had been written. That this plaintiff, as well as all others in interest, considered the matter as being under the immediate supervision of Mr. Mangum is plainly shown by the fact that after this sale was made, and while Adrian & Co. were proceeding to remove the mill, he, Lake, becoming alarmed lest his interests might suffer, went at once to this defendant and solicited him to interfere to prevent its removal until he, Lake, should be further secured. Acting at once upon this request, this defendant, Mangum, directed

Adrian & Co. to desist from removing the mill until further ordered by him. Messrs. Adrian & Co. did desist, and immediately, that is, on the 15th day of April, executed and delivered to Mr. Lake their written promise to hold the proceeds arising from the sale of the mill subject to the award to be made by the arbitrators. This written assurance Mr. Lake at once exhibited to Mr. Mangum, and announced his complete satisfaction with it, whereupon Mr. Mangum authorized Adrian & Co. to proceed with the removal of the mill. It is certainly not very consistent for this plaintiff to insist upon the position that this defendant had no rightful charge of or jurisdiction over this property, or over the arbitrators, when on the very day that the order to the umpire was made by this defendant, of which in this action plaintiff now so strongly complains, he was himself seeking this defendant's intervention in the same business and profiting by it.

On the 17th of April, only two days after the last action mentioned, it was reported to Mr. Mangum that Mr. Lake was interfering with and preventing the delivery of the mill, whereupon he, Mangum, addressed a note to Mr. Lake, advising him that Adrian & Co. had preferred such complaint; that, if he was so doing, he was violating his agreement, and directing him to desist, or otherwise he would be liable to an action for damages.

This instruction Mr. Lake seems to have entirely disregarded, and on the 24th of April Adrian & Co. brought an action against him for damages and to compel him to perform his agreement with reference to the removal of the mill. This action was tried on the 12th of May, and resulted in a judgment being rendered against Mr. Lake for damages in the sum of four hundred dollars, and directing him to allow the removal of the mill to proceed. In the conduct of this trial this defendant was associated with three American residents of Nagasaki, drawn as assessors, all of whom joined with Mr. Mangum in the judgment. This was the only action that was commenced against this plaintiff about this property, and I am unable to find in all of the testimony any tending to show that Mr. Mangum's order to the umpire directing him to delay making an award had any effect whatever in inducing the commencement of this action, or in any manner affecting its result.

The claim of H. Fogg & Co., mentioned by their agents to Mr. Mangum in the fall of 1868, and which caused him to instruct Mr. Lake not to sell the mill until claimants against it could be heard from, was formally presented to him and filed on the 11th day of May. It proved to be a claim to the ownership of an interest of one-third part of the mill. This claim the plaintiff settled privately and voluntarily. In a letter written by Lake to McCaslin, of date July 27, 1869, in speaking of this Fogg claim, he says: "As I said before, the arbitration agreement was to be final, and it is decided now what is to be done. Mr. Twombly's claim (the Fogg claim) is no good only for one-third; your third will stand good, for all that I can see," &c. Thus it is proven that there was justice in the demand that Mr. Mangum was endeavoring to have investigated before allowing this mill to be sold and removed.

Relative to the further proceedings and final action of the arbitrators, it is proven that on the 27th of May, 1869, the two original arbitrators, Smith and Brunier, agreed upon and made an award which was filed in the consulate and fully and promptly enforced. In making this award Mr. Maltby, the umpire, did not join, as it was not necessary for him to do so, as Smith and Brunier were enabled to agree at once upon the discovery and production before them of the written contract of partnership before mentioned, which was supposed to have been lost.

Thus it appears that within less than two months from the time when the agreement to arbitrate was made, an award was rendered in which Mr. Smith, this plaintiff's selected referee, joined. There seems about all this to be no appearance of unusual delays having been sustained; and as justice to all parties was, beyond question, meted out, greater expedition, if productive of any different results, could only have produced wrongful ones.

This defendant, in advising all of the claimants to this mill-property to settle their difficulties out of court, by arbitration or otherwise, and in lending the full force of his official position in securing substantial justice for all, and preventing a multiplicity of actions at law from being commenced, was obeying and carrying out both the letter and the spirit of the statutes of the United States of America on the subject. Sec. 19 of the act of 1860 provides as follows: "It shall be the duty also of the said ministers and the consuls to encourage the settlement of controversies of a civil character by mutual agreement, or to submit them to the decision of referees agreed upon by the parties; a majority of whom shall have power to decide the matter," &c.

Whatever of technical informality there may have been in any of these proceedings was invoked and assented to as much by the plaintiff as by any of the other claimants, and did not result in damage or injury to any.

In brief, I fail to find any evidence tending to show that this plaintiff sustained any damage, or that any action taken by this defendant was without his strict line of duty. An action more entirely barren of merit it has never been my fortune to examine.

JUDGMENT.

It is ordered, adjudged, and decreed that this action be, and the same is hereby, dismissed, and that this defendant have and recover of and from this plaintiff his proper costs disbursed in this action, taxed at the sum of dollars, and that execution therefor.

Ordered accordingly.

Done at Yokohama, this 19th day of December, 1871.

C. E. DE LONG,

*Envoys Extraordinary and Minister Plenipotentiary
of the United States of America in Japan.*

UNITED STATES MINISTERIAL COURT IN AND FOR THE EMPIRE OF JAPAN.

GEORGE WILKINS LAKE, PLAINTIFF,	} Action of libel to recover damages in the sum of \$25,000.
<i>versus</i>	
WILLIE P. MANGUM, DEFENDANT.	

STATEMENT OF THE CASE.

Plaintiff in his petition in this action charges that the defendant, while United States consul at Nagasaki, wrote and published certain false and libelous statements respecting him, in a dispatch addressed to Hon. H. Fish, Secretary of State, dated July 7, 1870, and claims damages in the sum of twenty-five thousand dollars.

Defendant in his answer admits writing a dispatch to the honorable the Assistant Secretary of State, in which the language mentioned and

complained of in the petition was used, but he denies that these statements are libelous or false, or uttered with any intention to injure this plaintiff, and further avers that his dispatch was an official and privileged communication, and denies that he otherwise uttered or published said statements except by having sent said dispatch.

OPINION.

The only evidence adduced upon the trial of this action in addition to what was adduced upon the trial of the two former causes was the production of a copy of the dispatch mentioned in the petition and a copy of a letter from the honorable the Assistant Secretary of State to Hon. B. F. Butler and others, showing that the Secretary had forwarded a copy of said dispatch to Mr. Butler.

Technically, plaintiff's case fails in his failure to prove that such a dispatch was addressed to the person named in his petition, viz: Hon. H. Fish; but inasmuch as this point was not raised by defendant, this court will proceed to pass upon the case on its merits.

It is undoubtedly true that in ordinary correspondence, by common-law rules, language such as is contained in this dispatch is actionable and is presumptively false and malicious, but such a rule of presumption does not apply to privileged communications, as will be seen by the following references:

Communications made *bona fide* in performance of a duty or with a fair and reasonable purpose of protecting the interests of the party using the words are privileged. (Somerville v. Hawkins, 12 Jur., 450, per Maule, J., 3rd Eng. Law and Eq. R., 503.)

Where the relation between the parties by whom and to whom the communication is made is such as to render it reasonable and proper that the information should be given, it will be regarded as privileged. (Lewis et al. vs. Chapman, 16 N. Y. R., 374.)

A communication which would otherwise be actionable, is privileged if made in good faith upon a matter involving an interest or duty of the party making it, though such duty be not strictly legal but of imperfect obligation, to a person having a corresponding interest or duty. (Van Wyck vs. Aspinwall, 17 N. Y. R., 190.)

As the evidence shows that Mr. Mangum, while consul of the United States at Nagasaki, wrote this dispatch to his superior officer upon his demand for him to inform him fully with regard to all of his proceedings had in connection with this plaintiff, it is at once seen that it falls fully within the rules of law above quoted, and therefore that it is to be regarded as a privileged communication.

In the trial of actions of this nature, the burden of proof remains on the plaintiff to prove actual malice if the communication is a privileged one, regardless of the nature of the language used, as will be seen by reference to the following citations:

The rule, observes Lord Campbell, is, that if the occasion be such as repels the presumption of malice, the communication is privileged, and the plaintiff must then, if he can, give evidence of actual malice. If he gives no such evidence, it is the office of the judge to say that there is no question for the jury, and to direct a nonsuit or a verdict for the defendant, &c. (Taylor vs. Hawkins, 16 Queen's B., 321; Addison on Wrongs, p. 684.)

A communication being shown to be privileged, the burden of proof is on the plaintiff to show actual malice. (Somerville vs. Hawkins, above quoted; Greenleaf on Evidence, vol. 2, sec. 421.)

If from the plaintiff's own showing it appears that the words were not used in an actionable sense, he will be nonsuited. (*Ib.*, sec. 423.)

Plaintiff in this action did show this by proving that defendant Mangum, as a consul and a judge of a consular court, uttered these words solely in a dispatch that may be termed a report of his proceedings to his superior officer, as he was in duty bound to do upon his request.

The sending of a copy of this dispatch to Mr. Butler and others by

the honorable Secretary is not a matter affecting this defendant or increasing his liability in any manner, as there is no evidence that such a proceeding on the part of the honorable Secretary was usual or probable, or that defendant expected any such course to be pursued, the rule governing such matters being only and correctly stated in the following citation :

When the publication is by a private letter directed and sent by mail to a particular person, the defendant is liable for the damages caused by any further publication of the letter by the person to whom it is addressed, or by other persons after it comes into the hands of the person addressed if such publication is a probable and natural consequence of the first sending of the letter. (*Miller vs. Bartlett*, 6 Cush., 71.)

Plaintiff having failed to prove actual malice on defendant's part, in uttering these words, or their falsity, or that plaintiff sustained any actual damage by their utterance, his case remains almost entirely unsupported by any evidence.

Although somewhat irregular, the court will notice and reply to an argument made by plaintiff's counsel during this trial, to the effect that defendant had made an order directing this plaintiff to leave this empire, and he, the plaintiff, fearing that if he did not obey it he would be at the mercy of the Japanese authorities, did leave, and thus was deprived of the advantage of giving his own testimony upon these trials. In reply to this, it is a sufficient answer to say that plaintiff's counsel might have taken his client's testimony by deposition if he had desired to do it before his departure; but a still more complete answer to this is, that this plaintiff, by his counsel, applied to this legation and obtained an order vacating the one made by Mr. Mangum, all of which was done prior to Mr. Lake's departure from Japan, leaving him as fully and securely at liberty to remain here as he ever was. If either plaintiff or his counsel had inquired at this legation they would have learned the fact. Hence, if his absence is a loss or hardship, it is one that must be considered as voluntarily caused by himself.

JUDGMENT.

It is hereby ordered, adjudged, and decreed that this action be, and the same is hereby, dismissed; the defendant to have and recover from the plaintiff his proper costs and charges disbursed by him in this action, taxed at the sum of dollars, and that execution issue therefor.

Done at Yokohama, December the 19th, 1871.

C. E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America in Japan.*

UNITED STATES MINISTERIAL COURT IN AND FOR THE EMPIRE OF JAPAN.

GEORGE WILKINS LAKE, PLAINTIFF,	} Action for false imprisonment. Amount of damages claimed, \$5,000.
vs.	
WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS.	

STATEMENT OF CASE.

The petition in this action charges the defendants with having arrested and imprisoned this plaintiff on two different occasions for the

period of twenty-four hours each time, and caused him, the plaintiff, to expend the sum of \$131.

That said imprisonment was unlawful, and done with the intention to damage this plaintiff; and that by it he was caused loss and damage in the sum of \$5,000.

Defendant Maugum, separately answering, admits that at the various times, and in the place specified in the petition, he, as United States consul, acting judicially, did authorize and direct plaintiff's imprisonment, but denies that his action was wrongful or unlawful, or done with any intention to cause this plaintiff damage or injury, but, on the contrary, avers that such action was taken by him in the enforcement of two judgments of his court, wherein plaintiff was adjudged to be guilty of a contempt of court, and sentenced to pay a fine and be imprisoned.

Defendant Dent, in his answer, also denies that his acts in the premises were unlawful or malicious; admitting that he arrested and imprisoned plaintiff, but averring that he did so as an officer of the consular court, in obedience to the lawful process of that court, so directing and addressed to him.

Both defendants deny that plaintiff sustained the loss or damage claimed by him, or any loss or damage.

OPINION.

From the evidence adduced in this and the previous case, it appears that the judgment of the consular court at Nagasaki, wherein Adrian & Co. were plaintiffs, and G. W. Lake was defendant, directed the payment by defendant to plaintiff of the sum of \$400 damages, and also directed the defendant to deliver up the keys of the flour-mill, and permit its delivery by Adrian & Co. to the purchasers. This judgment of the court was, at the time of its rendition, read to Mr. Lake, and evidently fully understood by him. At the same time the consul directed this plaintiff to obey it, which direction he (Lake) refused to comply with, as was shown to the court by affidavit, and was not denied by this plaintiff. An attachment was issued, directing that Mr. Lake should be arrested and brought before the court to show cause, if any he could, why he should not be punished for contempt in refusing to yield obedience to the judgment.

When he (the plaintiff) appeared before the court, he failed to show any sufficient reason for his action, and he was sentenced to pay a fine of \$50 and costs, amounting to the sum of \$15.50 more, and be imprisoned for a period of twenty-four hours.

A commitment was issued accordingly, and executed by defendant Dent, acting United States marshal, who imprisoned plaintiff, and collected the fine, as directed by the writ.

After his (plaintiff's) discharge from imprisonment, under this first sentence, it was again proven to the court that he still remained contumacious, as he still refused to yield obedience to the judgment; whereupon he was again fined and imprisoned as before, and search-warrant had to be issued by the court before the keys to the mill could be obtained, and the delivery of it proceeded with.

No evidence has been offered in this action tending to prove any fraud or irregularity in the judgment obtained by Messrs. Adrian & Co. against this plaintiff in the consular court. This fact, with the farther one that it is a rule of law that all judgments of courts having jurisdiction are to be presumed to be regular until the contrary is proven, limits the matter to be considered in this action to the question of the regularity

and legality of the proceedings taken by this defendant in enforcing the judgment by punishing plaintiff for contempt.

It is a well-settled rule of law that all courts in the performance of their lawful functions as incident to their judicial character, have the authority to preserve order, decency, and silence in their presence, and to enforce a reasonable degree of obedience to their mandates and decrees. By statute in most of the States contempt of court is defined to be disobedience to or resistance of a lawful order of a court or judge. In California it has been decided that "if a court having jurisdiction should issue an erroneous order, a disobedience of it is a contempt." (*Ex-parte Cohen*, 5th Cal., 494.)

The reason for the stringency of these rules is manifest, viz, to discourage resistance of a personal nature to judgments and orders such as this plaintiff offered in this instance.

The jurisdiction of the consular court over Mr. Lake and the property at the time these proceedings were had, stands unchallenged; Mr. Lake admitted it by entering the court defending the action, and thus seeking for a judgment at its hands in his favor, which failing to obtain, he refused to obey when adverse to his wishes. It certainly needs no argument to convince any person that he, Lake, was bound by that judgment, and that the court by summary proceedings could compel obedience on his part.

The course pursued by defendant Mangum, as judge of the consular court, in attaching Mr. Lake for disobedience and punishing him for his contempt, was in accordance with the practice generally, so far as known to this court, throughout the United States; the punishment inflicted does not seem to have been at all excessive, and in the second instance was unusually moderate.

At the time these proceedings were held, no rules or regulations had ever been adopted in Japan governing the practice in consular courts of the United States. The defendant, Mr. Mangum, was left as other consuls were, to follow the dictates of his own judgment, and governed by a sense of justice and a general knowledge of the practice governing courts elsewhere in similar cases. It would be manifest injustice to the court below, in reviewing its proceedings in such a case as this, to hold it to strict conformity with subsequently-adopted regulations. The proper course, in the judgment of this court, is to affirm the action of the court below if from the whole evidence it appears, first, that the court had jurisdiction, and next that it administered substantial justice.

From all the evidence it does conclusively appear that defendant Mangum, in these proceedings, and in all of his proceedings in relation to this mill-property, was acting in the best of faith, with an honest purpose to secure the right of the claimants to it; and that his labors resulted in securing substantial justice to all.

The court has, therefore, no hesitation in finding the action of defendant Mangum in causing the arrest and punishment of this plaintiff for his disobedience to have been fully justified.

As defendant Dent acted under regularly-issued warrants from a properly-constituted court having jurisdiction, he is clearly exonerated from all liability to this plaintiff.

Counsel for plaintiff, in his argument of this cause, strongly admonished upon the conduct of Mr. Mangum as having been partial to Fogg & Co., to Adrian & Co., and to all others in interest except to this plaintiff, thereby seeking to show malice and ill-will on the part of Mr. Mangum to this plaintiff. This court is unable

to observe any sufficient evidence of any such feeling, nor does it consider that the record at all warrants this accusation. When this plaintiff wished the delivery of the mill to be stopped until he should be secured in his rights, and applied to Mr. Mangum for assistance, it was at once accorded, and the delivery was not allowed to proceed until Mr. Lake notified Mr. Mangum that such security had been given and that he was satisfied with it. After that it was the duty of Mr. Mangum to compel him, Lake, to cease his interference and allow the delivery to proceed, that the rights of the other parties might be secured. Counsel also complains of Mr. Mangum's conduct in not attaching the mill when requested to do so by Mr. Lake. Counsel will remember that by no known laws an attachment is allowed for debts already secured. Mr. Lake's debt was then secured by the property being put in the hands of Adrian & Co. as trustees, for the benefit of himself and all others, to await the decision of the arbitrator.

From all the evidence, this court is fully satisfied that all damage sustained by this plaintiff was caused by his own perverseness. His remark made in the presence of Mr. Dent, and testified to by him, to wit, "I know I am wrong and foolish about this, but I will see it through. Ned [his brother] wants me to," reveals very truthfully where the malice in this matter existed.

JUDGMENT.

It is hereby ordered, adjudged, and decreed that plaintiff take nothing by this action, that the same be dismissed, and that these defendants have and recover of and from this plaintiff their proper costs and charges in this behalf expended and taxed at the sum of dollars, and that execution issue therefor.

Done at Yokohama, this the 19th day of December, A. D. 1871.

C. E. DE LONG,

*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America in Japan.*

Statement of Mr. Lake.

TOPSFIELD, MASS., October 20, 1870.

I have had the honor of acknowledging the receipt of W. P. Mangum's letter dated July 7, 1870, and beg leave to submit the following additional statements:

I have never signed any contract or entered into any contract, either verbal or written, with any one for the delivery of the "flour-mill," or sanctioned the sale of it, save what is expressed in my letter dated April 15, 1869. On the same date Adrian & Co. answered the letter, and did not accept what I had written, and contradicted their statements that they had made in the morning of the same date. W. P. Mangum wrote a letter, dated April 15, 1869, to Mr. John Maltby, who was acting as umpire, requesting him to withhold giving any award until further instruction from him. By this interference he caused all the trouble and expense. I considered that I had as good a right to protect myself, and wrote to Adrian & Co. that I declined to deliver up the mill until a final award of the arbitrators. There is no law to compel a man to deliver up his property, even if he has agreed to, until he has been satisfied. I

deny that I brought the mill from Shanghai; never had anything to do with H. Fogg & Co. in regard to the receipt or management of the mill, save that when A. S. Fobes claimed to hold a power of attorney to sell the mill, I wrote to H. Fogg & Co. that I should sell the mill at auction. They said that they should hold me responsible for damages. The mill was brought to Nagasaki in the brig E. W. Seyburn, and consigned to W. M. Robinet or Case & Co., and stowed in a building occupied by Mr. Cherry. R. J. McCaslin came to Nagasaki empowered by a letter from H. H. Holcomb, a partner of H. Fogg & Co., (at that time,) to sell the mill or to do the best he could with it. The most he could get offered was \$1,200. I received it from him under a written agreement. H. Fogg & Co. had no claim against me whatever, or the money that I had expended for the benefit of all concerned in the mill. Their claim was against R. J. McCaslin and Captain Simmons, for the expense of shipping and storage. If H. Fogg & Co. made an amicable settlement with McCaslin in Shanghai, so far as they were concerned, why did not Mangum order the money to be paid over as per award of the arbitrators' decision given? Edward Lake had my written instructions not to settle unless he received the full amount awarded. It does not seem likely that he would sacrifice the \$400 unless he had been scared into it by W. P. Mangum's threats. Under such circumstances, W. P. Mangum's statement seems to be most glaringly preposterous. It may be true that the assessors did agree. If so, it shows a low and degraded principle. Article 10, June 22, 1860, of the acts of Congress, does not deny the right of an appeal from a case like this, denied me by W. P. Mangum at Nagasaki, Japan, May 12, 1869. No explanation was ever made to me regarding the acts of Congress in any case that I have had before the United States consul.

Even if Capt. E. Talman did commit himself in assaulting a Japanese boatman, he served his time in prison for the offense. The consul had no right to transport him out of the country in irons; it was the Japanese place to request him to leave. My brother offered to pay his passage to the United States. Capt. E. Talman I have known for about ten years; has been in my employ for a number of years. I have always found him to be a sober, honest, upright man; have never known him to ill-use any one when it could be avoided. While in charge of my vessel he has been intrusted with large sums of money. With regard to my associates, they were few and far between. W. P. Mangum nor W. M. Robinet were no associates of mine, for the reason that I never found them worthy. They are birds of a dark species, who will not act honorably when it is for their interest so to do, always ready to do a mean action. As to W. M. Robinet, who appears signed as an assessor in the case that came off August 31, 1865, this document I never before saw, nor never knew its contents or purport, save what D. L. Moore said. It was never read to me; it may seem preposterous, nevertheless it is true. W. M. Robinet, for his fidelity to Walsh & Co., has always been an associate of the consuls. He was sentenced in Hong-Kong, a number of years ago, to two years' imprisonment for attempting to burn a ship and cargo bound into the port of Callao, South America. From Hong-Kong he had shipped a cargo of old rags and gunny-bags, and insured it for silk. He failed to burn the ship, so got off with two years' imprisonment. He has always been a bitter enemy of mine, for the simple reason that I would have nothing to do with such a character. He has always been an intimate associate of the consuls. He, Robinet, was in business in opposition to me, and of course did his best to break me up. I deny that the ship Anna Kimball was smuggling, or attempting to smuggle, or that I was

implicated in trying to smuggle. The Anna Kimball was chartered by me and in my name in Shanghai for the Prince of Ukiko, to load rice in a by-port for Hiogo. The ship entered and cleared at Nagasaki, and, by the advice of D. L. Moore, she was cleared for Yokohama. He was informed of the business. The vessel went to the bay to load the next day after the Akindo, a British barque chartered for the same prince. The Anna Kimball was seized; the British barque went on her voyage and delivered her cargo at the port of destination; the Anna Kimball had to return to Nagasaki. I owned no part of her cargo, nor did I have any interest in it save my commission on the charter of the vessel. Previous to chartering the Anna Kimball, I had chartered the British barque Valetta, and the ship Merse; both loaded their cargo in the port of Nagasaki. The Valetta went to Yokohama, the Merse to Hiogo, a non-treaty port; she came back to Nagasaki. There was nothing said about smuggling. Since then, in the spring of the year 1869, I chartered for the Japanese the British barque Alice Yainter, British barque Amacree, British schooner Basalle, American barque Juan Rattray, British schooner Bobtail Nag, and two or three other vessels, all loaded in the same bay as the Anna Kimball. There was never anything said about smuggling. I would state that when the Anna Kimball arrived off Nagasaki, D. L. Moore would do nothing to assist the vessel through the difficulty, and told the captain that his ship and cargo was confiscated, and advised him to clear out with the ship. The ship lay off the port about a week. The difficulty could not be arranged; so the captain determined to go to Shanghai and seek legal advice. On arriving at Shanghai he went to W. P. Mangum, who advised him to go down to the Rugged Islands, and there lie till the difficulty could be settled. This was not satisfactory to me, as there was too much responsibility resting on my shoulders. I ordered the ship back to Nagasaki, which the captain was loth to do, as he had already engaged a pilot to take her down to the islands; so that, for fear he would not go to Nagasaki, I staid on board. It took twelve days to get back to Nagasaki, a distance that a vessel can run in forty-eight hours. On arriving at Nagasaki, I laid my case before Admiral Bell. William Robinet made himself very conspicuous in the affair, and wrote me seventeen letters which I refused to answer. D. L. Moore advised me to answer them; for refusing he shamefully abused me by improper language and threats. The Government brought a suit after she was towed in by the United States steamer Yoming. The vessel was fined \$1,000, which I had repeatedly offered to pay, both to the custom-house and to the consul. The money was not paid by the ship, but by the charterers, my principals; the cargo was not confiscated. Through this, the officers informed me that the Prince had given orders never to do any business with Americans; and also through this trouble was the cause of my getting the ten days' imprisonment, as D. L. Moore had stated before witnesses that all he wanted was to get a pretense and he would put Lake through, and Robinet made his boasts that he advised D. L. Moore to put me in prison; hence my imprisonment for ten days for what I was not guilty. The case, August 31, 1865, I pleaded guilty and pleaded justification, which was not listened to by the court. For further particulars and copies of letters see papers transmitted under date of April 4, 1870, and November 26, 1867.

I very respectfully solicit a copy of the contract which W. P. Mangum says I entered into to deliver up the flour-mill; also, a clean copy of the court records in every case that pertains to myself; also, copies of H. Fogg & Co.'s documents against the flour-mill. I accuse W. P. Mangum of advising with Bruinnier, agent at Nagasaki for H. Fogg & Co.,

and arbitrator for R. J. McCaslin, how to make out the award in the flour mill case. The amount of money that W. P. Mangum has swindled me out of, in his infinite authority, is, fine for refusing to deliver over the mill, \$400; cost of court, \$84.55; fine and costs of court called contempt, \$65.50; for the same contempt, \$69.50; also, \$400 awarded by arbitration that W. P. Mangum would not allow to be paid; total amount \$1,019.55.

Very respectfully, yours,

G. W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,

Essex, ss. :

OCTOBER 21, 1870.

Subscribed and sworn to before me,

JOSEPH W. BATCHELDER,

Justice of the Peace.

[Rev. stamp.]

No. 17.]

UNITED STATES CONSULATE,

Nagasaki, April 15, 1869.

SIR: The arbitrators in the case of G. W. Lake *vs.* R. J. McCaslin, on account of flour ———, being unable to come to a satisfactory agreement, and having selected you as umpire to decide the case, I have to inform you that Messrs. H. Fogg & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,

United States Consul.

G. W. LAKE.

To JOHN MALTBY, Esq.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss. :*

OCTOBER, 21, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,

Justice of the Peace.

[Rev. stamp.]

COMMONWEALTH OF MASSACHUSETTS,

Secretary's Office, Boston, October 22, 1870.

I hereby certify that, at the date of the attestations hereto annexed, Joseph W. Batchelder was a justice of the peace for the county of Essex, in the said commonwealth, duly commissioned and constituted; and that to all his acts and attestations as such, full faith and credit are and ought to be given, in and out of court.

In testimony of which I have hereunto affixed the seal of the commonwealth the date first above written.

[SEAL.]

CHAS. M. LOVETT,

Deputy Secretary of the Commonwealth.

LOWELL, November 11, 1870.

Respectfully referred to the honorable Secretary of State for his information.

BENJ. F. BUTLER.

Mr. Mangum to Mr. Davis.

CONSULATE OF THE UNITED STATES,
Nagasaki, July 7, 1870.

SIR: I have the honor to acknowledge the receipt of your dispatch, No. 43, of May 20, 1870, with its inclosure, containing a note from the Hon. Benjamin F. Butler, a letter from certain parties, "selectmen" of Topsfield, and two letters from the brothers George W. Lake and Edward Lake, setting forth certain wrongs that they complain of having received at my hands in Nagasaki. In reply I have to say, in the first place, that these two letters of the brothers Lake are most villainous perversions of the truth, and beg to submit the following explanation, to wit: In the spring of last year a suit was instituted in this consulate against George W. Lake, by Messrs. Adrian & Co., a Belgian firm in Nagasaki, to recover damages for the non-fulfillment of a contract and to compel fulfillment of the same. This contract was to the effect that Messrs. Adrian & Co. should sell on commission, for the sum of \$5,500, and remove the same, a certain "flour-mill" situated on the premises of G. W. Lake, and owned by him and one R. J. McCaslin, of Shanghai, and retain this money in their hands until the dispute between Lake and McCaslin, as to the amount each was entitled to receive of the proceeds of this sale, should be decided by arbitration. In compliance with this, Messrs. Adrian & Co. effected the sale to certain Japanese, residing in Osaka, and proceeded to remove it to be transported to Osaka. At this juncture, Lake, in defiance of his contract, stepped in and stopped the removal by taking the key from the agent in charge and locking up the mill. Hence the suit.

The case was tried before me with the requisite assessors, on the 12th of May, 1869, and judgment given for the plaintiffs. The defendant contumaciously refused to comply with the judgment and obey the orders of the court. For this contempt he was summarily punished by a fine of \$50, and imprisoned twenty-four hours. He repeated his contempt after his release, and was again summarily punished in the same way.

The judgment of the court was enforced. The mill was removed and transported to Osaka, to be delivered to the purchasers. In due time the arbitrators who were to decide upon the respective claims of Lake and McCaslin made their award; and the price of the mill, which was stipulated to be paid on its delivery at Osaka, was received by Messrs. Adrian & Co. In the mean time a third party appeared, Messrs. H. Fogg & Co., of Shanghai, by J. F. Twombly, claiming an interest in this mill-property, as part owner, and holding certain charges against it to the amount of some twelve hundred taels, equal to about \$1,600, for auction-expenses, stowage, &c., in Shanghai, whence Lake had brought the mill. The arbitration showed that Lake had expended a large sum of money in erecting the mill and running it, for which he had only been partially refunded by the proceeds of the sale of the flour, having the sum of \$2,971.57 actually paid out of his own pocket. This amount the arbitrators awarded to him, and the residue of the \$5,500, to wit, \$2,528.43 to be equally divided between him and McCaslin. The award was made on the 27th of May, and the money for the mill received by Messrs. Adrian & Co. on the 15th of July following. They immediately informed me of its reception, and I forthwith instructed them to pay over to Lake the \$2,971.57, and to retain the residue, \$2,528.43, pending the investigation of the claim of Messrs. H. Fogg & Co. Before this money was received by Messrs. Adrian & Co., G. W.

Lake went away from Nagasaki, leaving his brother, Edward Lake, in charge of his business. Finally, McCaslin settled the matter, as far as he was concerned, with Messrs. H. Fogg & Co., in Shanghai, by an amicable compromise, and it then became narrowed down to a claim against Lake for about \$800; and this was eventually settled by Edward Lake paying to Drummond Hay (agent appointed by Messrs. H. Fogg & Co. to attend to this business) \$400. I had advised both parties to settle this matter amicably out of court, but at no time made mention of any sum that I considered fair to offer or receive. The proposal by Lake to pay \$400 was entirely voluntary on his part. Hay at first refused to accept this amount, and only after considerable delay, and with much reluctance, did finally assent to it. When Lake first told me that he had proposed to compromise by paying \$400, but that Hay had refused to accept the sum, he not only expressed his willingness to settle the matter in this way, but appeared anxious to have it done; and at no time did he ever express any objection, as far as I am aware, to paying this amount after his first proposal to do so.

Under such circumstances, the idea that Lake was compelled by me to "sacrifice \$400" is so glaringly preposterous that it could only have originated in the distempered imagination of such a creature as Edward Lake or his brother.

In the above-mentioned case of Messrs. Adrian & Co. *vs.* G. W. Lake the assessors unanimously assented to the consul's decision; consequently the decision was final. (Vide section 10, act of Congress June 22, 1860, giving certain judicial powers to ministers, consuls, &c.) The law on this point was fully explained to Lake, and he well knew he was not entitled to an appeal.

The captain, E. Tolman, mentioned in the letter of G. W. Lake, and whose punishment by imprisonment and subsequent deportation has aroused so much indignation in his bosom, was one of the most violent and desperate of all foreign population of Nagasaki, and a man of whom the natives stood in great dread. He had several times been arraigned before the consular court and punished, and on the occasion referred to the offense which Lake styles a "simple assault and battery" was the beating an inoffensive Japanese boatman in the most brutal manner, bruising and injuring him to such an extent that he was unable to walk about for several days. When Tolman was arrested for this offense he threatened to shoot the marshal, and at the trial carried into the court-room, concealed upon his person, a loaded revolver, which was taken from him and found to contain five ball-cartridges. This man Tolman and the Lakes were intimate friends and companions, and among such characters here the Lakes appeared to find their most congenial associates, all of them "birds of the same feather," men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties, and never hesitating to pervert the truth to suit their purposes.

G. W. Lake, by his lawlessness, forfeited, several years ago, his right to reside in Japan, (vide treaty, article VII, section 8,) and only by sufferance did he remain here. The forbearance that has been extended to him in not having the law enforced, and allowing him to remain in the country, in consideration of his youth, with the hope that more age and experience would teach him to correct his evil propensities, he has proved himself unworthy of and utterly incapable of appreciating. If strict justice had been dispensed to him, he would have been deported long ago. The consciousness of this fact, with perhaps an uneasy feeling that if he should return to Japan he might not be allowed to

continue in the country, may have something to do with his extreme anxiety about my remaining at Nagasaki.

I quote from the court records of this consulate the following offenses for which he has received judicial punishment, to wit: June 16, 1863, charge of assault and battery on the person of one Levi N. Burdick; fined \$25, with costs; August 31, 1865, charge of assault with a dangerous weapon on Japanese; complaint lodged by the native authorities; (as this case was especially of a heinous character, I inclose the finding of the court in full, marked Inclosure No. 1, September 28, 1866;) charge against both E. W. Lake and Edward Lake, of assault and battery on one John Brown, consisted but under extenuating circumstances, and fined one dollar each, with costs; July 10, 1867, charge of unlawfully detaining and wounding a Japanese officer; sentenced to a fine of \$25, and imprisonment for ten days, and again warned that he had forfeited his right to reside in the country. On the way to jail, under this sentence, he escaped from the marshal by drawing a pistol and threatening to shoot him; was concealed some days in the vicinity of Nagasaki by his friend, the aforesaid Captain E. Tolman, and then smuggled by him on board a steamer bound for Yokohama. He staid a while at Yokohama, thence proceeded to China, and after skulking about for several weeks, returned to Nagasaki, was re-arrested, and imprisoned for his allotted term. He was also implicated in smuggling at an unopened port in the spring of 1867, on the ship *Anne Kimball*, of which he was the charterer. The case was heard June 5, 1867, and the ship fined \$1,000. (Vide Treaty Regulations, under which American trade is to be conducted in Japan; regulation 2, section 5.)

G. W. Lake was registered at this consulate, September 12, 1860, and Edward Lake, September 10, 1862. They were both boys at the time of their arrival. Their occupation has been that of butchers, compradores, and general traders. The latter still resides here, and the former up to the summer of last year, (1869,) when he left for Yokohama, and thence proceeded to the United States, where he arrived, I suppose, some time in the autumn. So he must have been absent from Topsfield nearly ten years, living all that time, with the exception of the few months spent on the voyages from and back again to America, in a foreign land some twelve thousand miles away.

I beg to place these facts, together with the court record, by the side of the letter of the "selectmen" of Topsfield, who so confidently vouch for the good character of G. W. Lake, they "having known him from his earliest days."

I have, &c.,

WILLIE P.

UNITED STATES CONSULAR COURT,
Nagasaki, August 31, 1865.

UNITED STATES	}	Charge of assault with a dangerous weapon.
vs.		
GEORGE W. LAKE.		

* * * * *

FINDING OF THE COURT.

The court finds the prisoner guilty of the offense with which he had been charged, pointing out to him that in kicking an old man, while sitting down, and without a word being said on either side, he had committed a cowardly, brutal act, and that having first gone to

his room before going to the Japanese house, and loading a revolver and taking it with him, he showed that he was prepared to commit a very serious crime if there had been an opportunity for it.

He was then placed in the custody of the marshal, until such time as he should be called up again for sentence. The court then adjourned.

The governor of Nagasaki was informed of the result of the trial. (See letter No. 83, letter-book, folio 178.) September 11, 1865. Court met at 11 a. m., the marshal having been ordered to bring the prisoner into court at that time for sentence.

The prisoner was told that, in the opinion of the court, he richly deserved imprisonment, but that in consideration of there being no other jail in the port than the Japanese jail, where he could be placed, and the court being very reluctant to confine him there at this season of the year, a heavy fine would be inflicted instead. He was further told that it had been very difficult to satisfy the Japanese authorities with this mode of punishment, the governor having been very urgent that some punishment should be given, which the victims of his brutality could see and appreciate. Prisoner was then warned against a repetition of the offense he had committed, and reminded that this being his second conviction of misdemeanor, he had, under the fifth (5) clause of the seventh article of the treaty of Yedo, lost his right of permanent residence in Japan, and could be required by the Japanese authorities to leave the country. He was then sentenced to pay a fine of \$200 and to pay the cost of court; to stand committed until paid.

JOHN G. WALSH, *U. S. Consul.*

Approved:

W. M. ROBINET, *Assessor.*

*Consulate of the United States,
Nagasaki, July 7, 1870.*

The above is a true extract from the consular-court record.
[L. s.]

WILLIE P. MANGUM,
United States Consul.

Mr. De Long to Mr. Fish.

No. 197.]

UNITED STATES LEGATION, YOKOHAMA,
Japan, June 6, 1871.

SIR: I have the honor to advise you that, on the 26th of April last, one George Wilkins Lake, as plaintiff, filed in my court his petition at law against Mr. Willie P. Mangum, United States consul at Nagasaki, as defendant. (Inclosure No. 1.) This petition, as you will observe, charges the defendant with having abused his powers as consul, whereby he, the plaintiff, was caused to suffer loss and damage in the sum of fifteen hundred dollars, for which sum judgment is prayed for by the plaintiff.

The petition being duly verified, and costs of court having been paid by plaintiff, I issued a summons, directed to defendant, requiring him to appear and answer said petition within twenty days after service of the same upon him. (Inclosure No. 2.) This summons having been duly served and returned, the defendant, on the 23d of May, appeared in said action by filing in court a demur to the complaint of plaintiff. (Inclosure No. 3.)

Also, on the 26th of April last, the said George Wilkins Lake, as plaintiff, filed in my court another petition at law against Willie P. Mangum and L. M. Dent, defendants, charging them with the offense of false imprisonment, and demanding a judgment for damages in the sum of \$5,000. (Inclosure No. 4.) In this action I also issued a summons, as in the last case mentioned, which, having been regularly served, the defendant Dent, on the 20th of May last, answered by demurring thereto. (Inclosure No. 5.)

On the 23d of May the defendant Mangum also appeared, and joined issue in said action by demurring to the petition of plaintiff. (Inclosure No. 6.)

On the 23d of May last the said George Wilkins Lake filed in my court another petition at law against said Willie P. Mangum, charging him with having uttered and published certain libelous statements affecting him, and asking a judgment in damages against the said defendant for the sum of \$25,000. (Inclosure No. 7.)

Mr. Mangum, being present at this legation when this last petition was filed, waived the issuance and service of summons in said action, and appeared by filing a demur to plaintiff's petition. (Inclosure No. 8.)

Inasmuch as in all of these actions the question of the jurisdiction of this court was raised, the same as it was in the action of Einstine Bros. *et al. vs. Lemuel Lyon* and others, reported to you by me in dispatches No. 30 of the 21st of March, 1870, and No. 52 of the 20th of May following; and inasmuch as I had never been advised by you that my action in that case was approved, I determined, before proceeding further with any of these actions, to communicate all of these proceedings to you, and ask for instructions.

I should not have entertained any doubts relative to my line of duty but for your silence with regard to the Einstine case, which was followed by the receipt by me from you of the new consular regulations, which provide, in paragraph 433, page 100, as follows: "The power of commencing civil and criminal proceedings is vested in consular officers *exclusively*."

As this paragraph might have been intended as a reply to the Einstine dispatches, I regarded it as being prudent at least to advise with you before proceeding, especially as the good of the service here requires that I should not exercise any doubtful powers over our consular officers, who are subject to be frequently harrassed by similar actions to these; and who feel that it is not within the proviso of the law that they should be subject, as consuls, to any superior officer directly but yourself, and who also claim that their power for good with the Japanese officials will be materially affected if they may be constantly sued and brought into my court by persons who, from time to time, they have to punish to enforce obedience to our laws and treaty obligations with Japan.

Having resolved to pursue this course, I addressed a letter to Mr. Hill, plaintiff's attorney, advising him of my determination. (Inclosure No. 9.)

On the following day I received a note from Mr. Hill, entirely and cordially approving of my determination to report these causes to you before trying them. (Inclosure No. 10.)

On the same day I replied to Mr. Hill, thanking him for his concurrence. (Inclosure No. 11.)

On the 28th of May following I received, somewhat to my surprise, a note from Mr. Hill, demanding, on behalf of Mr. Lake, an immediate trial of all these causes. (Inclosure No. 12.) To which note I replied on the same day, reviewing the reasons assigned by him, and refusing to comply with his demand. (Inclosure No. 13.)

This correspondence I have reported to you to place you in possession of all the facts in connection with this case, should Mr. Lake make a complaint to you against me, as I have been informed that he declared he would do.

If it should be your opinion that it is my duty to try these causes and not dismiss them, I should feel deeply obliged to you if you would go further, and give me your views with regard to the questions of law raised by the demurs, as some of them are difficult to determine without access to a law-library.

If there is any authority you could refer me to, in passing upon the demur to the libel action, I would thank you for it, as I have no books treating upon the subject of libel.

I have, &c.,

C. E. DE LONG.

[Inclosures.]

- No. 1. Petition of G. W. Lake.
- No. 2. Summons.
- No. 3. Demur of Defendant Mangum.
- No. 4. Petition of Lake in case of Lake *vs.* Mangum and Dent.
- No. 5. Demur of Defendant Dent.
- No. 6. Demur of Defendant Mangum.
- No. 7. Petition of Defendant Lake in libel suit.
- No. 8. Demur of Defendant Mangum.
- No. 9. Note of C. E. De Long to G. W. Hill.
- No. 10. Reply of Mr. Hill indorsing my views.
- No. 11. Reply of De Long to Hill.
- No. 12. Demand of Mr. Hill for immediate trial.
- No. 13. Reply of De Long refusing this.

[Inclosure No. 1.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *April*, 1871.

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
against } Petition.
 WILLIE P. MANGUM, DEFENDANT. }

The plaintiff, George Wilkins Lake, respectfully shows to this honorable court as follows :

1st. That the defendant was at the time of the injuries hereinafter complained of, and now is, the United States consul for the port of Nagasaki, in the empire of Japan.

2d. That on the 7th day of April, 1869, the said plaintiff and R. S. McCaslin, of said Nagasaki, made an agreement together to submit certain differences then existing between them respecting a certain flour-mill to the arbitration of J. W. Smith and Johannes Brunier, giving to the said arbitrators power to select an umpire, and further agreeing to submit to the award of said arbitrators and umpire in the said premises, and that John Maltby was selected as such umpire by the said arbitrators.

3d. That while the said differences were pending before the said arbitrators and the said umpire, and before any award had been made under the said agreement of submission to arbitration as aforesaid, to wit, on the 15th day of April, 1869, the defendant, willfully and maliciously intending to injure the plaintiff, and by virtue of his authority as United States consul as aforesaid, interfered to prevent an award being rendered by said arbitrators and said umpire, and wrongfully and illegally issued and directed an order from the United States consulate at said Nagasaki to the said umpire, John Maltby, directing the said umpire to withhold giving an award under the said submission to arbitration, whereby the said arbitrators and said umpire were for a long period prevented from giving such award, and whereby the plaintiff was for a long time prevented from having his claim in said premises decided and from receiving the amount of money to which he was entitled therein; and whereby the plaintiff was subjected to an action for damages against him in the consular court of the United States, at said Nagasaki, and was put to great loss, expense, trouble, and inconvenience, and otherwise subjected to great injury, to his damage fifteen hundred dollars.

Therefore the plaintiff prays this honorable court for judgment against the said defendant for the sum of fifteen hundred dollars, and for the costs of this action, with such other and further relief as may be just in the premises.

G. W. HILL,
Counsel and Attorney for Plaintiff.

EMPIRE OF JAPAN, *Yokohama, ss* :

G. W. Hill, being first duly sworn, on oath says that he is the duly-authorized attorney of the plaintiff in the foregoing-entitled action; that he has read the foregoing petition, and knows the contents thereof; and that, as he is informed and verily believes, the said petition is true; and that the reason that this petition is verified by this affidavit is that the plaintiff named in said petition is now absent from Yokohama.

G. W. HILL.

Subscribed and sworn to before me at Yokohama this 26th day of April, 1871.

C. E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States in Japan.*

[Inclosure No. 2.]

UNITED STATES LEGATION,
Yokohama, Japan, April 26, 1871.

TO CHARLES L. FISHER,
United States Marshal for Japan, at Nagasaki:

You are hereby commanded and directed forthwith, after the receipt by you of the annexed copy of petition and summons in the action entitled George Wilkins Lake *vs.* Willie P. Mangum, to make due service of the same upon the said defendant by delivering to him personally a true copy thereof, and return the same to this court within twenty days from the date of its receipt by you, with your proceedings thereunder indorsed in writing hereon.

Hereof fail not.

Given under my hand and the seal of this court this the 26th day of April, A. D. 1871.

C. E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America in Japan.*

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *April, 1871.*

GEORGE WILKINS LAKE, PLAINTIFF, }
vs. } Summons.
WILLIE P. MANGUM, DEFENDANT. }

The people of the United States to Willie P. Mangum, defendant :

You are hereby required to appear in an action brought against you, by the above-named plaintiff, in the ministerial court of the United States for Japan, and to answer the petition filed therein, within twenty days (exclusive of the day of service) after the service on you of this summons, or judgment by default will be taken against you, according to the prayer of said petitioner.

The said action is brought to recover the sum of fifteen hundred dollars, the plaintiff's damages alleged by him to have been suffered by him by reason of the wrongful act of the said defendant, in staying a certain arbitration, pending between the plaintiff and one R. J. McCaslin, about May, 1869, and more particularly set forth in the said petition, a copy of which is hereto annexed, and for costs of action. And you are hereby notified that if you fail to appear and answer the said complaint, as above required, the said plaintiff will take judgment against you for the said sum of fifteen hundred dollars and costs as aforesaid.

Given under my hand and seal of the ministerial court of the United States for Japan, at Yokohama, Japan, this 26th day of April, A. D. 1871.

C. E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America in Japan.*

[Inclosure No. 3.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *May 23, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States for Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
vs.
 WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

1st. To the jurisdiction of the court as having no original civil jurisdiction.

2d. That the petition fails to state any cause of action, because it charges no matters that is not error of judicial judgment, if there be error at all, for which no action lies.

3d. That a full explanation of his official action in this matter has been rendered to the Department of State, and accepted as satisfactory.

Therefore the defendant prays the honorable court that this action be dismissed.

WILLIE P. MANGUM, *Defendant.*

YOKOHAMA, *May 23, 1871.*

I hereby certify that the within demurrer was this day served upon plaintiff, G. W. Lake, by delivering to his attorney, G. W. Hill, a true copy thereof and showing to him the original.

May 24, 1871.

H. W. DUNSON,
United States Marshal.

[Inclosure No. 4.]

In the ministerial court of the United States for Japan.

YOKOHAMA, *April, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States for Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
against
 WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS. } *Petition.*

The plaintiff, George Wilkins Lake, respectfully shows this honorable court as follows:

1st. That the said defendant Willie P. Mangum was at the time of the injuries hereinafter complained of, and now is, United States consul at the port of Nagasaki, in the empire of Japan, and that the said defendant L. M. Dent, at the time of said injuries, was acting United States marshal at said port of Nagasaki, and that each of said defendants are citizens of the United States.

2d. That on the 13th day of April, 1869, at the said port of Nagasaki, in the empire of Japan, the defendant, W. P. Mangum, willfully and maliciously conspiring and intending to injure the plaintiff, wrongfully, maliciously, and illegally, and without any right or authority so to do, and against the will of the plaintiff, ordered, directed, and authorized the said defendant L. M. Dent to arrest and imprison the plaintiff, and that on said day, and at said place, the said defendant L. M. Dent, acting under such order and by the authority of said defendant W. P. Mangum, given as aforesaid, wrongfully, illegally, and by force compelled the plaintiff to go with him to the jail there situated, and there imprisoned the plaintiff, and there detained him and restrained him of his liberty for the space of twenty-four (24) hours, whereby the plaintiff was put to great pain, trouble, disgrace, and inconvenience, and was prevented from attending to his necessary affairs and business during that time, and was compelled to expend the sum of \$65.50 in costs of obtaining his discharge, to his damage of \$2,500.

3d. That on the 14th day of May, 1869, the said defendant, W. P. Mangum, willfully and maliciously, intending further to injure the plaintiff, and without any right or authority so to do, and against the will of the plaintiff, again ordered, directed, and authorized the said defendant L. M. Dent, to arrest and imprison the plaintiff, and that on said day, and at

said place, the said defendant L. M. Dent, acting by and under the order and authority of said defendant W. P. Mangum, given as aforesaid, wrongfully, illegally, and by force, again compelled the plaintiff to go with him to the jail, there situated, and there imprisoned the plaintiff, and there detained him and restrained him of his liberty for the further space of twenty-four hours, whereby the plaintiff was put to still further pain, trouble, and inconvenience, and was further prevented from attending to his necessary affairs and business during that time, and he was compelled to expend the further sum of \$68.50 in costs in obtaining his discharge, to his further damage \$2,500.

Therefore, the plaintiff prays judgment from the court against the said defendants for the sum of \$5,000, his said damages, with the costs of this action, and for such other relief as may be just in the premises.

G. W. HILL,
Counsel and Attorney for Plaintiff.

EMPIRE OF JAPAN, *Yokohama, ss :*

G. W. Hill, being first duly sworn, on oath says that he is the duly authorized attorney of the plaintiff in the foregoing-entitled action ; that he has read the foregoing petition, and knows the contents thereof, and that he is informed and verily believes the said petition is true; and that the reason that this petition is verified by this affidavit is that the plaintiff named in said petition is now absent from Yokohama.

G. W. HILL.

Subscribed and sworn to before me, at Yokohama, this 21st day of April, 1871.

C. E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary of the
United States of America in Japan.*

[Inclosure No. 5.]

In the ministerial court of the United States for Japan.

YOKOHAMA, *May 20, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF,
against
WILLIE P. MANGUM AND L. M. DENT, DEFENDANTS. } Petition.

Now comes the defendant L. M. Dent and demurs, inasmuch that the law provides that original jurisdiction rests with consuls, and the defendant herein named, not being at any time consul, places the above action out of the jurisdiction of the ministerial court.

L. M. DENT.

[Inclosure No. 6.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, *May 23, 1871.*

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
vs.
WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

1st. To the jurisdiction of the court as having no original civil jurisdiction.

2d. That the petition fails to state any cause of action, because it charges no matter that is not error of judicial judgment, if there be error at all, for which no action lies.

3d. That a full explanation of his official action in this matter has been rendered to the Department of State and accepted as satisfactory.

Therefore the defendant prays the honorable court that this action be dismissed.

WILLIE P. MANGUM,
Defendant.

Yokohama, Japan, May 24, 1871.

United States Marshal.

In the ministerial court of the United States for Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
against } Petition.
 WILLIE P. MANGUM, DEFENDANT. }

1st. That the said defendant was at the time of the injuries hereinafter complained of, and now is, consul for the United States at the court of Nagasaki, in the empire of Japan; and is a citizen of the United States of America.

3d. And the plaintiff says that on the said day the defendant falsely, willfully, and maliciously, composed, wrote, and published in his said letter of and concerning the plaintiff the further false and defamatory words and matter following, viz: "The defendant," (meaning the plaintiff) "contumaciously refused to comply with the judgment," (meaning the judgment of the consular court of the United States at Nagasaki, in Japan) "and obey the orders of the court," (meaning the said consular court, and meaning thereby that the plaintiff was a bad and lawless person, and had willfully set the law of the United States at defiance.)

5th. And the plaintiff says that on said day, and in his said letter, the defendant further ably and maliciously composed and published, of and concerning the plaintiff, the further false and defamatory words and matter following; that is to say: "This man Tolman and the Lakes" (meaning the plaintiff and Edward Lake) "were intimate friends and companions; and among such characters have the Lakes" (meaning the plaintiff and Edward Lake,) "appeared to find their most congenial associates; all of them" (meaning the plaintiff and all of his associates,) "birds of the same feather, men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties, and never hesitating to pervert the truth to suit their purposes," (meaning thereby that the plaintiff was a thoroughly bad, disreputable, dangerous, and dishonorable person, and one who should be avoided and shunned by every one; and that he, the plaintiff, was utterly devoid of honor or respectability, and that he was an habitual liar and law-breaker.)

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iff was without the pale or protection of the law of the United States, and had in Japan no legal rights which any person was bound to respect.) "The forbearance that has been exhibited to him" (meaning the plaintiff) "in not having the law enforced, and allowing him" (the plaintiff) "to remain in the country" (meaning the forbearance of the defendant; and that the plaintiff had been permitted by the defendant as a favor to remain in Japan) "in consideration of his" (the plaintiff's) "youth, with the hope that more age and experience would teach him" (the plaintiff) "to correct his evil propensities, he has proved himself utterly incapable of appreciating. If that justice had been dispensed to him, he" (the plaintiff) "would have been deported long ago;" (meaning thereby that the character and pursuit of the plaintiff were wholly evil, scandalous, and lawless, and that the plaintiff was wholly incapable and deficient of moral understanding or ability to appreciate friendship or kindly feeling; and that he was utterly unworthy of being assisted or befriended, or of the respect of good and worthy citizens and subjects residing in Japan.)

7th. And the plaintiff says on said day and in said letter the defendant further falsely and maliciously composed, and published of and concerning the plaintiff, the further and false and defamatory words and matter following, to wit: "He" (meaning the plaintiff) "was also implicated in smuggling in an unopened port in the spring of 1867;" (meaning thereby that the plaintiff was an outlaw and a criminal, and had violated the laws of the United States against smuggling.)

8th. And the plaintiff says that by means of the publication of the words and matter as aforesaid, he was injured in his reputation to his damage \$25,000.

Therefore the plaintiff prays judgment against the defendant for the said sum of \$25,000, and for costs of this action, with such other and further relief as may be just.

G. W. HILL,
Plaintiff's Counsel and Attorney.

EMPIRE OF JAPAN, Yokohama :

George Wilkins Lake, being first duly sworn, on oath says that he is the person named as plaintiff in the foregoing petition; that he has read the said petition and knows the contents thereof; and that the same is true of his own knowledge, except as to those things therein stated on information and belief, and that as to those things he believes it to be true.

G. W. LAKE.

Subscribed and sworn to before me, at Yokohama, this 23d day of May, 1871.

C. O. SHEPARD,
United States Consul at Yedo, Acting for Kanagawa.

[Inclosure No. 8.]

In the ministerial court of the United States for Japan.

YOKOHAMA, JAPAN, May 24, 1871.

Before his excellency Charles E. De Long, envoy extraordinary and minister plenipotentiary of the United States to Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
vs. }
WILLIE P. MANGUM, DEFENDANT. }

And now comes the defendant, Willie P. Mangum, and demurs—

1st. To the jurisdiction of the court as having no original civil jurisdiction.

2d. That the petition fails to state any cause of action, because it charges no matter but that contained in an official dispatch explanatory of defendant's official action regarding the plaintiff that was forwarded to the State Department, and accepted as satisfactory, which, being an official report made in the line of official duty to an official superior, can under no circumstances be considered as libelous, and no action at law can lie therefor.

Therefore the defendant prays this honorable court that this action be dismissed.

WILLIE P. MANGUM,
Defendant.

I hereby certify that I have this day served the within demurrer on G. W. Lake, by delivering it by attorney, G. W. Hill, a true copy thereof and showing the original.
Yokohama, May 24, 1871.

H. W. DUNSON,
United States Marshal.

[Inclosure No. 9.]

YOKOHAMA, May 23, 1871.

MY DEAR SIR: Having just returned from a walk, I received your cover containing a petition in duplicate of an action entitled *Lake vs. Mangum*, for \$25,000 damages. Also your letter asking me to file it, and inclosing \$25.

In the two cases previously commenced Mr. Mangum has filed demurs and sent to the marshal for service on you.

We cannot understand why the marshal has failed to give you both copies.

In this last action that you have just commenced, Mr. Mangum says that he will also appear and file a demur or answer within a few days, waiting summons, thus saving time and costs.

I have concluded that the proper course for me to pursue is to take the advice of the Secretary of State in all these actions upon the jurisdictional questions at issue before I hear or try them.

Never having been approved in the *Sherman-Einstine* case, the clause in the new regulations averring that all original jurisdiction is vested in consuls, and the further consideration that if I should be wrong in entertaining these suits it would cause great loss and expense for nothing, which would fall upon your client, causes me to pursue this course, which will cause a delay of but a few months, and then no doubt will remain upon my mind as to the course it is my duty to pursue.

I trust this course will prove satisfactory to Mr. Lake and yourself.

Yours, respectfully,

C. E. DE LONG.

G. W. HILL, esq.

P. S.—I return you the sum of \$10 inclosed.

[Inclosure No. 10.]

YOKOHAMA, JAPAN, May 24, 1871.

DEAR SIR: Your note of to-day in the matter of Mr. Lake's several actions is at hand.

I quite approve of the course you have indicated as that you will take in the matter as to procuring advices from the State Department. It is to us certainly a very grave and important matter to us, and one in which it is very desirable to proceed without error.

I have myself no doubt as to the ministerial court being the proper tribunal for its adjudication, and that the regulations of the State Department, on which the defendants rely in their demurrer, cannot be held to annul the act of Congress of June 22, 1860. Yet, as there is room for a question, your course is certainly a wise one.

The necessary delay which it will necessitate is very hard on the plaintiff, whose enforced absence from Nagasaki subjects him to continued loss and damage, but I don't know what suggestion to make in the premises that will relieve him.

Do I then understand that you will not decide on the question of jurisdiction until you can hear from the Department? for, I judge, of course Mr. Mangum will take a like course as to the last instituted action.

I am, sir, very respectfully, yours, &c.,

G. W. HILL.

C. E. DE LONG,

Envoy, &c., Plen'y, &c.

[Inclosure No. 11.]

Mr. De Long to Mr. Hill.

YOKOHAMA, May 24, 1871.

MY DEAR SIR: Your favor of this morning is at hand. I am much pleased to know that you agree with me in relation to the course I propose to pursue in the cases against Mr. Mangum.

The delay and inconvenience is to be much regretted; but at least it can be better borne by us all than the constant feeling of uncertainty and doubt that would weigh upon our minds if we tried these actions without asking for these advices.

I shall pursue the same course with all three of the cases.

Yours, &c.,

C. E. DE LONG.

[Inclosure No. 12.]

Mr. Hill to Mr. De Long.

YOKOHAMA, JAPAN, May 28, 1871.

In re G. W. Lake, vs. W. P. Mangum et al.

DEAR SIR: I am in receipt of your communication of the 23d instant, informing me that you have concluded that in the several actions pending in the United States ministerial court, in which G. W. Lake is plaintiff, your proper course will be to take the advice of the Secretary of State upon the jurisdictional question at issue before you hear or try them.

I yesterday informed you that to myself, also, this seemed advisable; but I am now instructed by my client, Mr. Lake, to ask for a hearing on the demurrers filed in the several actions at as early a day as possible; and I desire to present to you his view of the case.

Mr. Lake thoroughly appreciates your suggestion, that the questions involved are very important ones, as well as the interests involved large, and that it is very desirable to conduct these proceedings without error; and he quite coincides in all that can be said on these points; but at the same time the delay which will be necessary occasioned by awaiting advices from Washington will be to him a very great hardship; as for various reasons he cannot return permanently to Nagasaki where lie all his interests until the adjudication of these actions. He would be thus subjected to great and continued expenses, and loss of both time and money by the postponement.

It is believed that, as a matter of right, the plaintiff is entitled to a hearing on the questions of law involved, and a decision thereon without delay.

It is perfectly understood, on our part, how uncertain are the provisions of law to which you can look from your Government, in the consideration of these questions; and we appreciate the difficulty in which you are placed under the inadequate system of our practice, and with no more definite regulations or guide at your disposal than in fact exists; but as it is in a judicial capacity, and that only, that an appeal is made to you for relief, and viewing the question as one simply of legal practice, is the plaintiff not entitled to a decision from your court upon such lights and authorities as you may possess? This is our view.

The plaintiff appeals to a judicial tribunal, the ministerial court of the United States. That court has taken cognizance of his actions which are now pending before it; and, in the conduct of these actions, the plaintiff can only be guided by the usual and commonly approved legal practice. It is not believed that the State Department at Washington can entertain an appeal or review of the action of this court, or can in any case whatever exercise judicial functions; but even were that so, would there be any good reason for the inferior court in which a question is pending, to delay its adjudication until advices could be had from the superior tribunal?

The vital importance of these questions to the plaintiff, Mr. Lake, will, I trust, excuse the length and earnestness his own is urged.

I inclose herewith on behalf of Mr. Lake a precept for the hearing of the demurrer filed in the action G. W. Lake, plaintiff, vs. Willie P. Mangum, defendant.

I am, &c.,

G. W. HILL.

[Inclosure No. 13.]

Mr. De Long to Mr. Hill.

YOKOHAMA, JAPAN, May 26, 1871.

MY DEAR SIR: I have received your letter of this day's date requesting an immediate trial of the demurrer in the case of Lake vs. Mangum and Dent, and which demand is made, as you state, at the instance of your client.

I have only to say in reply that while I regret that the course I have seen proper to adopt may cause your client some inconvenience or delay, I shall, however, adhere to my determination of conferring with my superior officer before I hear this or either of these causes, confident that this course is a proper one to secure justice and avoid errors. I cannot see, however, how my not hearing these cases at present can in any way prevent your client from proceeding to Nagasaki and conducting any business there or elsewhere as he might do if the causes were tried.

There is nothing in these cases the determination of which one way or the other would affect his personal liberty or his pursuit of his ordinary business.

I am confident that he will agree with me as well as yourself (when you reflect) that if it is proper for me to advise with the honorable Secretary of State at all, that it is my duty to do so before I hear these causes and not afterward. To do so subsequently would be very absurd.

Yours, &c.

C. E. DE LONG.

Mr. Davis to Mr. De Long.

No. 97.]

DEPARTMENT OF STATE,
Washington, August 19, 1871.

SIR: I have to acknowledge the receipt of your dispatch No. 197, of June 6, 1871, with inclosures relating to two suits commenced before you by Mr. G. W. Lake against Consul Mangum, and a third against Mr. Mangum and Mr. Dent, marshal of the consular court.

It does not seem to me proper that I should instruct you upon a point now presented for your judicial determination in actions between private suitors.

I however inclose you copies of memoranda in relation to the questions raised by the pleadings, in those which were prepared by the law-officer of this Department.

You will attach to his suggestions such weight as you may think them to deserve, and avail yourself of such assistance as they may furnish, as I am obliged to do when requiring his services, without being relieved of the responsibility of personal judgment.

I am, &c.,

J. C. B. DAVIS.

Mr. Shepard to Mr. Fish.

No. 6.]

UNITED STATES LEGATION,
Kanagawa, Japan, October 21, 1871.

SIR: Inclosed I have the honor to hand you an order issued by me, which so fully explains itself that I shall add but little.

With the matter in dispute between Mr. Lake and Consul Mangum, the Department is entirely conversant, and as, from an opinion of the law-officer of the State Department, I had reason to believe a speedy trial would be reached; and as, to my mind, it would be quite against the spirit and principles of our Government to deprive a citizen of his right of appeal; and as whatever action was taken must be immediate, before I could communicate with Mr. De Long, I issued the order, which may be less regular and legal than equitable. As "chargé d'affaires" I hardly know how I stand, but feeling in my action only a desire to do justly, I hope for your approval.

If this action be an error, I trust it will be found upon the side of right and mercy.

I have, &c.,

CHARLES O. SHEPARD.

Mr. Shepard to Mr. Mangum.

No. 83.]

UNITED STATES LEGATION,
Yokohama, Japan, September 26, 1871.

SIR: Whereas it appears to me by the affidavit of Geo. W. Hill, attorney for G. W. Lake, an American citizen, that an order and notice has been issued by yourself at Nagasaki to the effect that said G. W. Lake has lost his right of permanent residence in Japan, and is required to leave the country on or before the 7th day of October proximo; and

whereas it further appears that the said G. W. Lake has several actions pending in the ministerial court of the United States in Japan in which he is the plaintiff; and whereas it further appears that said actions could not heretofore be brought to trial owing to delays not the fault of the said Lake; and whereas it further appears that the personal presence of said Lake is necessary to said actions; and whereas the said plaintiff represents that said actions can be brought to a speedy trial; and whereas the said plaintiff prays that the foregoing described order and notice be provisionally suspended, and the time he is permitted to stay in this empire extended a sufficient length of time to allow of his prosecuting said actions:

Now, therefore, because of said affidavit and its showings, and because of certain documents received from the Department of State bearing upon this case, it is directed that the order heretofore mentioned, issued by yourself, be, and it hereby is, stayed in its effect and execution until further orders from this legation.

Of which please take notice and govern yourself accordingly.

I am, &c.,

C. O. SHEPARD.

(A copy of the above order was issued to all United States consuls in Japan.)

Mr. Fish to Mr. Butler.

DEPARTMENT OF STATE,
Washington, January 10, 1871.

SIR: I have the honor to acknowledge the receipt of your reference to this Department under date of September 20, last, of the communication of the 17th of the same month from Mr. G. W. Lake, requesting copies of certain records of the consular court at Nagasaki, Japan, supposed to be in this Department.

In reply I have to inform you that the records adverted to are not in this Department, nor are copies of them, or any part of them. They would appear, from the statement of the consul, a copy of which was communicated to you on September 3 last, and by you to Mr. Lake, to show repeated convictions of the latter for assaults and batteries. It is not perceived how they can be in any way material for the consideration of Mr. Lake's complaint against the consul of injustice done in a civil suit decided by the consul with the aid of assessors. The tenth section of the act of June 22, 1860, makes such decisions final. If injustice has been done to Mr. Lake, this Department is not aware of any mode in which it can be remedied.

I have the honor to be, sir, your obedient servant,

HAMILTON FISH.

HON. B. F. BUTLER,
House of Representatives.

Mr. Davis to Mr. Mangum.

No. 43.]

DEPARTMENT OF STATE,
Washington, May 20, 1870.

SIR: I transmit herewith copies of papers submitted for the consideration of this Department by Hon. Benj. F. Butler, wherein one G. W. Lake claims that you have done him injustice in the settlement of claim,

by causing him to sacrifice \$400, which it is stated was awarded to him by arbitration.

I will thank you to give such explanation of the affair as in your judgment may seem necessary.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Acting Secretary.

WILLIE P. MANGUM, Esq.,
United States Consul, Nagasaki.

Mr. Davis to Mr. Lake.

DEPARTMENT OF STATE,
Washington, April 25, 1870.

SIR: In reply to your letter, without date, received on the 22d instant, I have to inform you that consuls are not exempt from prosecution because of their official position, but may be proceeded against like other persons when within reach of judicial powers.

The Department is not informed of the present address of Mr. Moore.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

GEO. W. LAKE, Esq.,
Topsfield, Mass.

Mr. Fish to Mr. De Long.

No. 124.]

DEPARTMENT OF STATE,
Washington, December 19, 1871.

SIR: I have to acknowledge the receipt of Mr. Shepard's dispatch of the 21st of October last, No. 6, in regard to the case of Mr. G. W. Lake, and, in reply, to state that as the Japanese authorities have requested that he be sent out of the country as soon as the complaint of one Laka against him has been investigated and justice done, in accordance with the seventh article of the treaty between Japan and the United States, their request, unless modified, must be complied with; but as by the terms of the same article the time at which he must leave may be extended, not to exceed one year, to be calculated from the time he shall be free to attend to his affairs; and, as it has not yet been shown to me that the complaint of one Laka has been investigated and justice done, and further, as it appears that the said Laka has not settled his other affairs in Japan, I approve of the order made by Mr. Shepard, dated Yokohama, September 25, 1871, staying, until further orders from you, the previous order made by W. P. Mangum, esq., the United States consul at Nagasaki, to the effect that the aforesaid G. W. Lake must leave Japan on or before the 1st day of October last.

I am, &c.,

HAMILTON FISH.

No. 260.]

UNITED STATES LEGATION, JAPAN,

December 21, 1871.

SIR: I have the honor to report to you that following, as nearly as I could, the line of your instructions contained in your No. 97, of the 19th of August, A. D. 1871, and the opinion of Mr. E. Peshine Smith, accompanying it, I have tried and decided the two actions at law commenced by George Wilkins Lake, as plaintiff, against Willie P. Mangum, as defendant, and the one commenced by the same plaintiff against Willie P. Mangum and L. M. Dent.

Inclosures Nos. 1 to 29, inclusive, are copies of the documentary evidence adduced during the three trials; inclosure No. 30 is copy of the parol testimony; and No. 31 is a copy of the judgments awarded in the three causes, with newspaper copy also inclosed.

Trusting that you will pardon the roughness of this dispatch, as I am terribly hurried by my preparations for departure,

I have the honor to remain, sir, your most obedient servant,

C. E. DE LONG.

Hon. HAMILTON FISH,

Secretary of State, Washington, D. C.

P. S.—Notice of appeal to the United States district court in California has just been received and filed in case No. 2, (inclosure 33.)

List of inclosures.

No. 1.—Arbitration agreement.

No. 2.—Complaint of Messrs. Adrian & Co., in their action against Lake.

No. 3.—Letter of W. P. Mangum to Mr. Twombly, of Fogg & Co.

No. 4.—Order of Mangum to the mission to suspend making an award.

No. 5.—Adrian & Co. to G. W. Lake, agreeing to hold proceeds of sale of mill subject to the decision of the arbitrators.

No. 6.—Order of Mangum to Lake, directing him to not sell or remove the mill.

No. 7.—Arbitrator's award.

No. 8.—Claim filed by Fogg & Co.

No. 9.—Judgment in case of Adrian & Co. *vs.* Lake.

No. 10.—Letter from McCaslin to Lake, advising him of the sale of the mill.

No. 11. Letter of Mangum to Lake, directing him to allow the delivery of the mill to go on.

No. 12.—Letter of Lake to McCaslin, admitting validity of the Fogg claim.

No. 13.—Original partnership contract between McCaslin and Lake.

No. 14.—Account filed by G. W. Lake.

No. 15.—Lake's request to have the mill attached.

No. 16.—Answer of Lake in the Adrian case.

No. 17.—Order of Mangum to Lake to file his answer in the Adrian case.

No. 18.—Lake's letter in reply to the order.

No. 19.—Commitment for contempt.

No. 20.—Attachment for contempt.

No. 21.—Copy of court-docket in the contempt cases.

No. 22.—Affidavit of Ferdinand Plate.

No. 23.—Search-warrant.

- No. 24.—Letter of Lake to Mangum.
- No. 25.—Receipts of L. M. Dent.
- No. 26.—Receipts of L. M. Dent.
- No. 27.—Receipts of L. M. Dent.
- No. 28.—Dispatch of Mangum to the Assistant Secretary of State.
- No. 29.—Letter of Assistant Secretary of State to Hon. B. F. Butler.
- No. 30.—Copy of notes of parol evidence taken during the trial.
- No. 31.—Printed copy of judgment of the ministerial court.
- No. 32.—Newspaper copy of judgment of the ministerial court.
- No. 33.—Notice of appeal.

[Inclosure No. 1.]

NAGASAKI, JAPAN, *April 7, 1869.*

G. W. LAKE
vs.
R. J. McCASLIN. } In matter of dispute on account of flour-mill.

We, the undersigned parties, do mutually agree to submit to the arbitration and decision thereof to Capt. J. U. Smith, on part of G. W. Lake, and Johannis Bruinier, esq., on the part of R. J. McCaslin, with power to said J. U. Smith and Johannis Bruinier to select an umpire: and we further agree to submit to the award of said arbitrators, or a majority of them, and consent that said award shall be final.

In testimony whereof we, the said George W. Lake and R. J. McCaslin, hereunto subscribe our names, day and date above given.

G. W. LAKE.
R. J. McCASLIN.

Signed in presence of—
WILLIE P. MANGUM,
United States Consul.

[Inclosure No. 2.]

H. SCHIFF, REPRESENTING ADRIAN & CO.,
versus
GEORGE W. LAKE. } Action for damages.

To the United States consular court at Nagasaki:

The plaintiff, H. Schiff, representing Messrs. Adrian & Co., represents that the defendant, George W. Lake, a citizen of the United States, did, on the 17th of April, refuse to comply with his agreement to allow plaintiff to remove a flour-mill situated on defendant's premises, thereby subjecting plaintiff to the damage of \$40 per day as lay-days of the brig Magi, employed to carry said mill from Nagasaki to Osaka, to be delivered to the parties to whom plaintiff had sold the said mill, and petitions the court to compel defendant to make good this damage up to the present time, to carry out in good faith his agreement, and render plaintiff what further compensation the court may deem just.

Nagasaki, April 26, 1869.

H. SCHIFF,
Representing Messrs. Adrian & Co.

UNITED STATES CONSULAR COURT
Nagasaki, April 26, 1869.

Signed and sworn to before me.

WILLIE P. MANGUM,
United States Consul; Acting Judicially.

UNITED STATES CONSULAR COURT,
Nagasaki, April 26, 1869.

SIR: Notify Mr. Lake to appear at the United States consulate at Nagasaki, on Friday next, the 30th instant, at 11 o'clock a. m., to present, under oath, his written answer to the foregoing petition, by serving him personally with an attested copy of the petition and of this order, making return of your service herein under oath.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

L. M. DENT,
United States Marshal.
S. Rep. 659—3

[Inclosure No. 3.]

CONSULATE OF THE UNITED STATES,
Nagasaki, April 18, 1869.

SIR: Your letter of this date in the matter of the mill is duly received. I will direct the umpire to delay his award in the matter of arbitration until such time as he hears further from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,
United States Consul.

J. F. TWOMBLEY, Esq.,
For H. Fogg & Co., Nagasaki.

[Inclosure No. 4.]

UNITED STATES CONSULATE, Nagasaki, April 15, 1869.

SIR: The arbitrators in the case of G. W. Lake *vs.* R. J. McCaslin, on account of flour-mill, being unable to come to a satisfactory agreement, and having secured you as umpire to decide the case, I have to inform you that Messrs. H. Fogg, & Co., of Shanghai, having declared to me that they have an interest in this mill also, it is necessary that you withhold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,
United States Consul.

JOHN MALTRY, Esq.

[Inclosure No. 5.]

NAGASAKI, April 15, 1869.

DEAR SIR: With regard to the sale of the flour-mill which we sold to the Japanese, by order of Captain McCaslin, for a sum of \$5,500, less our commission of 5 per cent., we repeat to-day what we already told you verbally, that we shall keep this money till the arbitration between you and Captain McCaslin, now pending, is decided, and shall pay you, in accordance with the wishes of the United States consul, the amount decided upon by the arbitration, not exceeding the above-mentioned sum.

Your obedient servants,

ADRIAN & CO.

Messrs. G. W. LAKE, Co.—*Present.*

[Inclosure No. 6.]

UNITED STATES CONSULATE,
Nagasaki, November 21, 1868.

SIR: I am informed by Mr. Forbes, representing the parties who own the mill located on your premises, that you have notified him that it is your intention to sell the mill on the 30th instant. You are hereby ordered to desist from selling or removing any part of said mill, until the owners or parties concerned can be communicated with, and a proper understanding be arrived at in respect to the same.

Very respectfully, yours, &c.,

WILLIE P. MANGUM,
United States Consul.

G. W. LAKE, Esq.

[Inclosure No. 7.]

I, the undersigned Johannis Bruinier, having, by desire of the parties concerned, consulted to act as arbitrators between G. W. Lake and R. J. McCaslin respecting the sale and proceeds of a certain flour-mill, now or lately in possession of G. W. Lake, and especially as regards G. W. Lake's claims against said mill, do now declare that, having carefully examined G. W. Lake's accounts against said mill, and also an agreement made between G. W. Lake and R. J. McCaslin, I find as follows:

Firstly. That, according to the said agreement, G. W. Lake becomes a partner with R. J. McCaslin in said mill, and consequently shares equally in the profit or loss of the same.

Secondly. As regards G. W. Lake's accounts rendered, I am of opinion that, as G. W. Lake is a partner with R. J. McCaslin in the mill, he is not entitled to charge either interest on the money he expended in erecting or running the mill, rent for the land and premises occupied by the mill, or commission on sales of flour, &c. G. W. Lake's accounts should, therefore, be, in my opinion, as follows :

To Captain Smith, arbitrator of G. W. Lake, esq. :	
Cost of erecting flour-mill.....	\$2, 107 74
Cost of running flour-mill.....	2, 801 82
	<hr/>
	4, 909 56
Less proceeds of flour, &c., sold.....	1, 937 99
	<hr/>
Balance due G. W. Lake.....	2, 971 57

This sum of \$2,971.57 is all that I consider G. W. Lake fairly entitled to, and such sum should be deducted from proceeds of sale of the said flour-mill ; say \$5,500, and paid to G. W. Lake, thus leaving a balance of \$2,528.45 to be divided equally between G. W. Lake and R. J. McCaslin.

JOHS. BRUINIÈRE.

NAGASAKI, May 27, 1869.

I fully agree to the above statement.

J. U. SMITH,
Arbitrator for G. W. Lake & Co.

[Inclosure No. 8.]

No. 1.—(DUPLICATE.)

Account of sales of one flour-mill, engine, and fixtures, sold by the undersigned for account and risk of J. S. Baron, esq., Shanghai.

SALES.

One flour-mill, engine, and fixtures, sold for..... Tls. 2,700 00

CHARGES.

Commissions	130 00	
Advertising	70 00	200 00

Net proceeds.....	Tls. 2,500 00
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E. & O. E.

Shanghai, September 30, 1866.

H. FOGG & CO.

MAY 3, 1869.

I hereby certify that the net proceeds of above account of sales was duly passed to the credit of my account with the said Messrs H. Fogg & Co., Shanghai, China.

J. S. BARON.
T. T. McGRATH,
Book-keeper.

No. 2.

Statement of cost of one steam flour-mill, engine, fixtures, &c., shipped to Nagasaki, and now in the hands of Messrs. Lake & Co. there—In account with H. Fogg & Co., Shanghai—Interest, 12 per cent.

1806.		DR.
September 30.	To cash paid for one flour-mill, engine, and fixtures as above.....	Tls. 2,700 00
December 31.	To cash paid shipping-charges to Nagasaki.....	225 00
	To cash paid freight on do. to Nagasaki, \$225, at 75.....	168 75
1867.		
March 13.	To landing-charges on do. at Nagasaki, \$225, at 75.....	169 20

Due by average, October 20, 1866.....Tals, 3, 262 95
 To interest on do. to date, May 3, 1869, (annually,) @ 12
 per cent. per annum, (2 years and 195 days)..... 1, 067 16

1869.
 May 3. To total cost of above mill, this date.....Tals, 4, 330 11

E. & O. E.
 Shanghai, May 3, 1869.

H. FOGG & CO.
 T. T. McGRATH,
Book-keeper.

No. 3.

Statement of interests in said flour-mill as per memorandum of cost attached herewith.

DR.

C. R Simmons, one-third share of said mill, $\frac{1}{3}$ Tls. 4, 330.11..... Tls. 1, 443 37

CR.

By cash paid on account same December 31, 1866..... Tls. 900 00
 By interest on do. to date, (annually,) at 12 per cent.,
 (2 years and 123 days)..... 274 60
 1, 174 60

Balance due H. F. & Co. on above..... Tls. 26877
 R. J. McCaslin, one-third share of said mill, $\frac{1}{3}$ Tls. 4, 330.11..... 1, 443 37
 By cash received on account do. December 31, 1866... 900 50
 By interest on do. to date, 2 years and 123 days, (an-
 nually) 274 66
 1, 175 16

Balance due H. F. & Co. on above..... 268 21
 H. Frogg & Co., one-third share said mill, $\frac{1}{3}$ Tls. 4, 330.11..... 1, 443 37
 To balance due H. F. Co. by said mill this date, May 3, 1869 1, 980 35

E. & O. E.
 Shanghai, May 3, 1869.

H. FOGG & CO.
 T. T. McGRATH,
Book-keeper.

UNITED STATES CONSULATE-GENERAL,
Shanghai, China, May 4, 1869.

Personally appeared before me Thomas T. McGrath, who certified upon oath that the foregoing accounts, numbered 1, 2, and 3, respectively, are correct statements of same as taken from the books of Messrs. H. Fogg & Co.'s auction department.

Witness my hand and seal of this consulate-general the day and year last above written.
 [SEAL OF U. S. CONSULATE.] B. R. LEWIS,

Acting Vice-Consul-General, in charge.

[Inclosure No. 9.]

United States consular court, Nagasaki, May 12, 1869.

Judgment.

H. SCHIFF, REPRESENTING MESSRS. ADRIAN & Co., }
 vs. } Damages.
 GEO. W. LAKE.

Having heard and tried the foregoing action in damages, and to compel performance of agreement commenced before this court on the 26th April, 1869, I adjudge that the defendant pay to plaintiff the sum of \$400, being at the rate of \$40 per day for ten lay-days, extending from the time of the 17th of April, the day the defendant obstructed the removal of the

four-mill, to the 26th of April, both inclusive, on which this suit was instituted; and that defendant carry out in good faith his agreement by delivering up the keys of said flour-mill on demand, in order that plaintiff may remove the same, and deliver it to the parties who have purchased from him.

Defendant to pay costs.

Assented to.

WILLIE P. MANGUM,
United States Consul, acting judicially.

GEORGE A. LYONS,
GEORGE TAYLOR,
R. W. IRWIN,
Assessors.

United States consular court, Nagasaki, May 12, 1869.

H. SCHIFF, REPRESENTING MESSRS. ADRIAN & CO., }
vs. } Action for damages.
GEORGE W. LAKE.

Judgment for plaintiff with costs.

Fee-bill.

Hearing-fee.....	\$15 00
Marshal's fees :	
Serving copy of plaint and petition.....	\$1 00
Serving six subpoenas.....	3 00
Attendance on court, deputy marshal.....	3 00
Attendance on court, United States marshal.....	3 00
Returning six subpoenas.....	3 00
Summoning three assessors.....	3 00
Returning summons.....	1 50
Mileage.....	45
Serving summons on defendant.....	1 00
Crier's fees.....	1 00
	25 95
Clerk's fees :	
Docketing suit.....	1 00
Issuing summons and subpoenas.....	5 00
Recording court-minutes.....	3 50
Order to file answer.....	2 00
Thirteen seals.....	13 00
Filing documents.....	1 10
	25 60
Witness-fees, six, at \$1.50.....	9 00
Assessors' fees, three assessors, one day each, at \$3.....	9 00
	84 55

[Inclosure No. 10.]

NAGASAKI, JAPAN, *April 7, 1869.*

DEAR SIR: I have this day sold the flour-mill located on your lot in Naminohua for the sum of \$5,500. Messrs. Adrian & Co. will hold the whole amount of said sale-money, on account of what may be due you on account of said mill, the matter of which we have this day agreed to submit to arbitration.

R. J. McCASLIN.

G. W. LAKE, Esq.

Seen and agreed upon.

ADRIAN & CO.

[Inclosure No. 11.]

No. 17.]

UNITED STATES CONSULATE,
Nagasaki, April 17, 1869.

SIR: I am informed by Messrs. Adrian & Co. that you have stopped the work at the flour-mill and taken away the keys. This is directly opposed to the agreement you have entered into with them and Captain McCaslin, and is an illegal act.

You are hereby ordered to return the keys and allow the work to be resumed. If you persist in your unlawful course, you will subject yourself to a suit for damages.

Very respectfully,

WILLIE P. MANGUM,
United States Consul.

GEORGE W. LAKE, Esq., Nagasaki.

[Inclosure No. 12.]

YOKOHAMA, July 27, 1869.

DEAR SIR: In our conversation at Koba, you said you would send, if you could obtain it, a copy of the letter that you showed me when I received the flour-mill from you, which letter, if I am not mistaken, was signed by H. Holcomb and Captain Simmons. You stated that you delivered the letter to Captain Robinet. He is here now, but I do not know on what business; as I have not received the letter, it is of no use, that I can see, only to yourself. I have seen the United States minister, and showed all my documents. He said there is no appeal from the arbitration; and as I have been of the impression there is no going back on what is decided on, in my interview the minister advised me to go back and receive the money awarded. I said it would not be paid. His answer was that it would, and must be, and there was no getting out of it, and that Mangum had no right to keep it back.

Hoping to hear from you soon, I remain,

G. W. LAKE.

R. J. McCASLIN, Esq.

To R. J. McCASLIN, Hiogo, Japan:

My brother writes that he has received part of the amount awarded, \$2,971.57, leaving the balance to be disputed by you, I suppose, or your friend, Mr. Howard Twomly. The only thing for you now to do is to order the balance of money awarded to be paid, as I do not see that my claim affects you any; and as Mr. Twomly does not seem to be in any hurry about having the matter closed up, I think you had better press the matter, unless you have some personally animosity against me: as I said before, the arbitration agreement was to be final, and it is decided now what is to be done. Mr. Twomly's claim is no good, only for one-third. Your third will stand good, for all that I can see.

I remain, dear sir, yours, truly,

G. W. LAKE.

[Inclosure No. 13.]

Agreement between G. W. Lake & Co. and R. J. McCaslin.

1st. That G. W. Lake & Co. receives from Messrs. Cherry & Co. a steam flour-mill, as it now lies in his yard, and go down and erects the same in his ship-building yard at Namonilua, and furnish money to put said mill in order, and sell said mill when complete, or keep it running as said G. W. Lake & Co. sees fit, or to the advantage of himself and owners of said mill.

2d. That G. W. Lake & Co. shall receive for his services and money invested one-half of all net profits.

3d. Should said owner, R. J. McCaslin, wish to have said mill put up at auction, he must pay said G. W. Lake & Co. all expenses that said mill has cost in erecting.

4th. Should said mill be sold by mutual consent, then each to stand one-half profit or loss.

5th. That no person or persons not connected herein, not to be allowed to meddle or have anything to do with said mill unless agreeable to G. W. Lake, either for better or worse.

G. W. LAKE & CO.
R. J. McCASLIN.

Witnesses:

CHAS. CAVANAGH.
EDWARD LAKE.

[Inclosure No. 14.]

Account of sundries bought, and carpenters, and blacksmiths, and coolies, for flour-mill, since taken from C. Cherry.

DR.

1867.		
March	14. 2 carpenters, one day, and 4 coolies	\$1 08
	15. 4 coolies and 4 carpenters	2 64
	16. 7 carpenters and 3 coolies	3 30
	17. 5 carpenters and 4½ coolies	3 13½
	18. 12 coolies fetching around mill	3 96
	19. 4 carpenters, 24 coolies	9 24
	20. 27 coolies, 3 carpenters	9 90
	21. 1 carpenter, 9 coolies fetching machine	3 30
	221 feet timber, for shed	16 80
	26 stuboes ¼-inch boards	13 00
	23 pounds nails	2 76
	120 pounds Manila rope, for tackles	16 80
	80 pounds hemp rope, for stops	12 80
	4 double blocks	33 30
	4 wooden rollers	2 80
	22. 9 coolies, 1 dozen baskets	3 47
	23. 10 coolies, 33 sheets emery-paper	8 25
	1 keg white paint, 1 b. turpentine	5 00
	12 pounds tallow, 1 gallon paint-oil	3 50
	2 paint-brushes	2 50
	1 keg red lead, ½ cwt	8 00
	24. 2 iron scrapers, 17 coolies	8 11
	25. 13 coolies, 6 carpenters	6 27
	1 monkey-wrench, 1 blacksmith	4 33
	1 stanchion for sifting-machine	50
	1 cross-bar for same, 1 forge one day	1 20
	27. 10 carpenters, 9 blacksmiths	6 27
	2 forges 2 days	4 00
	24 sheets paper, emery	2 80
	2,640 bricks for bed of boiler	18 48
	28. 25 coolies, cleaning iron-work	8 25
	55 lbs. oakum	6 60
	1 screw-bolt, for cylinder, 2 pounds	50
	29. 135 pounds plate-iron	20 25
	5,310 bricks	37 17
	20 coolies, 2 days	6 60
	30. 20 carpenters and blacksmiths	6 60
	4 forges, 2 files	6 50
	31. 1,247 bricks	8 73
	27 coolies, cleaning iron-work	8 9
	200 bags lime, at 15 cents	30 00
April	1, 2. 32 carpenters and blacksmiths	10 56
	2. 5 masons, 20 sheets emery-paper	7 65
	4. 20 coolies, 1 monkey-wrench	10 60
	4 forges, 2 gallons p. oil	8 00
	5. 25 coolies, carrying stones mill	8 25
	29 carpenters and blacksmiths, 2 days	9 57
	6. 10 coolies	3 30
	385 feet lumber sawed for shed	7 70
	3,430 bricks	24 01
	7, 8. 27½ coolies	9 08
	25 carpenters and blacksmiths	8 25
	7 masons laying foundation	2 31
	10. Brass sieves for sifting bran, bolting-man	10 00
	1 shovel, 8 pounds tallow	2 00
	41 pounds packing, 1 b. turpentine	15 35
	12. 3,300 bricks set boiler in	23 10
	4,125 bricks set boiler in	28 87½
	13. 107 bags lime	12 87
	5 carpenters, 11 blacksmiths	5 28
	14, 15. 30 coolies, 11 masons	13 53
	7, 10. 18 coolies digging for foundation boiler	5 94
	14. 1,200 bricks	8 40
	20 coolies carrying dust and sand	6 60

1867.			
April	15.	4½ plaster-men setting boiler	\$1 48
		72 feet ¾-inch boards for sifting-machines	2 16
	16, 17.	19 coolies, 5 masons	7 92
		12 blacksmiths repairing balance-wheel	3 96
		9 carpenters, 4 extra coolies	4 29
	18.	¾ pound twine, 1 gallon castor-oil	1 80
		4 pounds tallow	50
		90 feet 3-inch planks, side balance-wheel as box	9 00
		60 pounds iron spikes, nut in box	12 00
		2 pounds nails, repair frame engine	40
		10 feet 3-inch planks, repair engine	1 00
	19.	48 pounds iron bolts and screw and nuts for frame brick-work in boiler	9 60
		9 feet 3-inch plank, frame brick-work boiler	90
		580 pounds iron fire-bars	116 00
		8 screw-bolts for screw steam-pipe to boiler	40
		16½ pounds rubber packing	16 50
		50 piles under chimney and mill	4 00
		1 small vise	5 00
		20 sheets emery-paper	2 40
		1 bottle turpentine	1 00
		9 carpenters	2 97
		9 blacksmiths	2 97
		35 coolies	11 55
		8 plastermen	2 64
	21.	20 pounds lead for packing pipes	4 00
		20 pounds hemp rope for strops	3 20
		6,975 bricks for bed of boiler	34 83
		8 carpenters	2 64
		9 plastermen	2 97
		6 blacksmiths	1 98
		67 coolies	15 51
	26.	20 bags lime	2 40
		2 glass water-gauges	1 50
		24 sheets emery-paper	2 80
		1 bottle castor-oil	50
	28.	1 blacksmith repairing wheel	3 96
		13 carpenters	4 29
		48 coolies	15 84
		10 flat stones to lay over piles under ching	3 50
	29.	1 bottle oil	50
		3 gross small screws	2 25
		5 stubboes, ¾-inch boards	2 00
	30.	Repairing tin cups for elevating wheat	1 00
		17 carpenters	5 61
May	3.	11 blacksmiths	3 63
		37 coolies	12 21
		Wignall, J. H.	100 00
	9.	8½ yards white cloth for windows bolting-machine	2 50
		10½ carpenters	3 79
		10½ blacksmiths	3 79
		5 b. bamboos for roof for shed	1 00
	10.	10 baskets, dust-baskets, 8 dirt-sieves	1 00
		¾ pound leather	50
		109 pounds steam safety-valve	16 35
	12.	12 carpenters	3 96
		12 blacksmiths	3 96
		30 coolies	9 90
		corner boards sifting-machine	50
		3 flour-spouts	1 00
		2 sheets iron plate, or sheets over wheel of elevator flour	4 00
	15.	9 carpenters	2 97
		2½ days blacksmith	82
		25 coolies	8 25
		12 large bags lime	3 00
	19.	9 carpenters fitting frame bolting-machine	2 97
		5 blacksmiths	1 65
		17 coolies	5 61
		1 camphor-wood plank for pattern	1 00
		Makits for lime and mason plastering well	10 00

1867.			
May	25.	18 carpenters	\$5 77½
		11 blacksmiths	3 63
		35 coolies	11 55
		Recasting safety-valve	4 00
June	30.	558 pounds cast-iron fire-bars	100 48
	—.	9½ carpenters	3 07
		6 blacksmiths	1 98
	8.	8 coolies	2 64
		8 carpenters	2 64
		4 blacksmiths	1 32
	10.	8 coolies	2 46
		5 carpenters	1 66
	12.	3 blacksmiths	99
		10 coolies carrying water to boiler	3 30
		12 packages black lead for wheels	1 50
		1 monkey-wrench	4 00
	16.	1 keg paint	3 00
		1 yard canvas, 20½ coolies	7 26
		2 pounds tallow	25
		19½ carpenters	6 43½
		8 blacksmiths, fitting pipes	2 64
	18.	20 coolies	6 60
		35 bundles shingles	6 00
		Bamboos for roof of shed	50
		Brass pipe for steam-gauge	1 50
		7½ pounds rubber packing	7 50
	20.	Making tank for well	12 00
		Bolting-cloth	18 50
		10 carpenters	3 30
		5 blacksmiths	1 05
		8 coolies	2 64
	29.	Makills on account contract to build chimney	189 90
		Casting 1 wheel for sifting wheat machine	3 00
		3½ tons coals	28 00
		13 coolies cleaning mill	4 29
July	3.	1 day carpenter	30
	7.	7 boats dust to plaster around wall	7 00
		4 coolies	1 32
		1 keg black paint	2 50
		1 gallon paint-oil	2 00
		1 bottle turpentine	1 00
		2 paint-brushes	2 00
	10.	9 carpenters	2 97
	14.	12 carpenters, working on shed	3 96
		Copper tacks	25
		8 coolies	2 64
		2 water-buckets	1 00
		2 gallons castor-oil	3 50
		6 pounds tallow	75
		1 keg green paint	3 00
		10 piculs firewood	2 30
		22 inches 1½ gas-pipe for water-gauge from Nicolls & Boyd	2 30
		4 nuts and washers for same, from Nicolls & Boyd	16
		2½ washers, from Nicolls & Boyd	1 00
		1 pound brass for spindle	50
		½ pound copper wire	55
	16.	Blacksmiths, repairing 2 packing-screws	5 00
		6 coolies, digging well	1 98
		Digging well deeper and plastering, per contract	8 00
		8 screw-bolts on steam-gauge to boiler	50
		13 pounds bolts screwing engine to frame of foundation	2 60
		3½ pounds iron for hoop balance-wheel to shaft	6 40
		12 screw-bolts and nuts for piping to well	2 40
		4 pounds iron batin on flour-elevator frame	80
		6 feet camphor-wood for conductor	50
		2 irons to lift mill-stones off and on	50
		15 pounds plate-iron on wooden wheel for governor-belt on shaft	3 00
		5 large rasps and files	14 00
		2 pounds iron cup for shaft of elevators flour over tank	40
		40 feet 5-inch boards	60

1867.		
July	16. 6 bolts for water-pipe.....	\$1 00
	200 feet boards load around shed.....	8 00
	10 pounds nails.....	2 00
	6 cold-chisels.....	6 00
	3 small files.....	1 50
	2 chipping-hammers.....	3 00
	1 sledge-hammer.....	3 00
	1 pair large vises.....	20 00
	3 oil-feeders.....	1 50
	2 iron water-buckets.....	1 00
	Carpenters and coolies shifting door.....	4 50
	9 coolies.....	2 97
	10 carpenters.....	3 30
	7 tins for catching oil.....	1 00
	2 pounds nails.....	40
	90 feet 2-inch plank for bench.....	6 30
	Digging well 5 feet.....	15 00
	31. Henry Gibson for 139 days labor up to 31st July, 1867.....	371 13
Total cost of erecting the flour-mill before running.....		2, 127 98
E. and O. E.		

G. W. LAKE & CO.

Flour-mill account after erected and ready and run, labor, coals, water, and so forth.

July	25. 72½ piculs wheat.....	\$280 00
	29. 37 piculs wheat.....	135 00
	30. 28 piculs wheat.....	104 00
Aug.	4. 331.15 piculs wheat.....	1, 057 87
	20. 12 piculs wheat.....	45 00
	10 piculs wheat.....	36 30
	31 piculs wheat.....	104 00
July.	— 4 pieces cotton drill.....	17 00
	29. 2 pieces cotton drill, for bags.....	8 50
Sept.	5. 5 pieces cotton drill, for bags.....	21 25
	20. 4 pieces cotton drill, for bags.....	17 00
	22. 2 pieces cotton drill, for bags.....	8 25
	27. 6 pieces cotton drill, for bags.....	25 50
July	30. 4 coolies carrying wheat to mill.....	1 32
	22 days, coolies 22 days.....	7 26
	31. 2 coolies.....	66
Sept.	2. 4 coolies.....	1 32
	8 days, one coolie.....	2 64
	2 coolies, one month.....	10 60
	2 gallons castor-oil.....	4 00
	½ picul vegetable-oil.....	7 00
	5 tubs for flour, 3 basket sieves sifting wheat.....	4 00
	Freight of 331.15 piculs wheat from Yokohama.....	140 00
Aug.	10. 16 coolies working on mill.....	5 23
	9 coolies digging well deeper.....	2 97
	2 tons coal.....	13 00
	1 ton coal.....	8 50
	3 carpenters fitting trolls.....	99
	12. 2 coolies.....	66
	2 orgers.....	6 00
	7 tons fine coals.....	49 00
	140 piculs coals.....	72 00
	2 boats full of water for boiler.....	1 75
	2 gross small screws.....	2 00
	1 dozen packages black lead.....	1 00
Sept.	5. 16 feet 1-inch boards.....	1 12
	14 feet 2-inch boards.....	64
	2 pounds nails.....	30
	Coolies' and carpenters' work, one month.....	16 00
	1½ pounds twine to sew bags.....	30
	4 tins green paint.....	2 00
	Boy and coolies, Japan fireman.....	5 75
	8. 1 carpenter.....	33

1867.		
Sept.	8.	6 feet brass sieve.....
		38 piculs coals.....
	20.	12 coolies.....
		Water, 2 days.....
		2 bags lime and wood.....
		4 pounds tallow.....
		2 pounds twine.....
		5 pounds oakum.....
		24 pounds sheets emery-paper.....
		8 pounds oakum, 96 cents; carrying water to boiler, \$3.75.....
		100 piculs coals.....
		Labor and coolies carrying flour.....
	28.	22 days, coolies running mill.....
		2 carpenters.....
		Baskets carry grain and sieves and thread.....
		Winnowing-machine.....
	27.	Water for 3 days for boiler.....
		3 coolies one month.....
		2 pounds candles, 18 coolies.....
Oct.	—	2½ gallons oil.....
		1 keg white zinc.....
		10 pounds red lead.....
		6 pounds oakum.....
		1 bl. turpentine.....
		2,000 bricks lay around mill and well.....
		1 package screws.....
		1 stick 4 feet teak.....
	12.	7 carpenters.....
		6 coolies.....
		1½ pounds rubber, for steam-valves.....
		1 iron door under boiler fire-place.....
		1 brass cup under spindle.....
		26 pounds yellow ochre.....
	20.	5 bags lime.....
		1 pound nails, and plaster.....
		12 days carpenters.....
		½ dozen sheets emery-paper.....
		8 pounds oakum clean machine.....
	30.	3 coolies, one month labor.....
		1 keg green paint.....
		8 pounds tallow.....
		24 feet 2-inch plank.....
		1 bottle of lamp-oil.....
		1 keg white lead.....
		2 pounds nails.....
		10 bags lime-plaster around well.....
		8 and 2 gallons paint-oil.....
		4 coolies one day.....
		4 carpenters 1 day making box to catch flour and shorts.....
		1 stub-board.....
Nov.	30.	3 coolies 1 month.....
Dec.	12.	Paid of H. Gibson up to date for 128 days labor.....
	30.	Rent of land and buildings the mill stands on for 10 months and 16 days.....

3, 106 85

E. and O. E.

G. W. LAKE & CO.

Flour-mill credit for flour, shorts, and bran sold.

July.	Shorts and bran sold.....	\$291 05
	160 bags flour.....	431 04
	100 bags flour sold Baker in Gattmachi.....	200 00
	294 barrels, in bags, sold shipping and our baker.....	295 00
	864 barrels, in bags, left on hand, at \$3.....	692 00
		1, 909 09
Commissions for selling flour, shorts, and bran.....		95 45

CR.

For things sold out of mill:	
77 pounds, bales, grain	\$15 40
1 monkey-wrench	4 00
1 ton coal	6 00
	<hr/>
500 bricks sold Wignall.....	\$25 40
	<hr/>
	3 50
	<hr/>
	1,842 54
Amount expended before trying to run	\$2,127 98
Amount expended after being started.....	3,106 85
Commissions and interest on cash advanced.....	261 74
	<hr/>
	5,496 57
	<hr/>
	3,654 03

E. and O. E.

G. W. LAKE & CO.

NAGASAKI, to December 30, 1867.

Mistake in the account Cr.....	\$6 3
Mistake in the account Dr.....	18 00
Mistake in the account Dr	10 00
1 engineer to receive wages for 11 days, \$1.50—\$16.50	26 62
To add.....	20 32
	<hr/>
1867.	
Dec. 31. Amount brought forward.....	\$3,674 41
1869.	
April 30. Interest on the above amount for 16 months, at 1 per cent.....	587 90
Go down rent for 16 months, at \$30.....	480 00
To commission on sale of mill without my consent, being taken out of my hands in November 31 last by power of attorney, authenticated by W. P. Mangum, at 2½.....	137 50
	<hr/>
Made up to April 30, 1869	4,879 81

E. and O. E.

G. W. LAKE & CO.

[Inclosure No. 15.]

NAGASAKI, April 16, 1869.

SIR: Hearing that the arbitration proceedings in reference to the claim I have against Mr. R. J. McCaslin and the flour-mill have been stopped pending an inquiry into a claim advanced by Messrs. Fogg & Co. I shall feel obliged by your attaching the flour-mill now erected on my ship-building yard A at Namnohera, until my accounts against the same are satisfactorily settled.

From yours, very respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,
United States Consul.

[Inclosure No. 16.]

NAGASAKI, April 29, 1869.

H. SCHIFF, FOR MESSRS. ADRIAN & CO., }
vs. } Action for damages.
G. W. LAKE.

To the United States consular court, Nagasaki, Japan:

G. W. Lake.—Defendant's answer and plea.—Summoned to answer the plaintiff, H. Schiff.

The defendant states that he never agreed to give up his lien on the flour-mill erected by Messrs. G. W. Lake & Co., on the lot owned by G. W. Lake, and known as ship-building yard A, other than in a letter dated April 15, 1869, to Messrs. Adrian & Co., in which the defendant simply informed them that he had received their letter dated April 7, and would allow them, on Mr. Schiff's word of honor to pay me for the mill, (after the arbitrators gave their decision,) to take down the mill and remove it, but never gave my permission for the removal of the mill off my ground. I have informed Mr. Schiff verbally both before and after

the letter was written, that on no consideration would I allow the machinery to be removed off the ground unless Mr. Schiff would give me his promissory note for the amount due me on said mill, this being then settled by arbitration, my claim being for \$4,800, or thereabouts. This letter (if it can be construed into an agreement) was written to favor Messrs. Adrian & Co., as a final decision of the arbitrators was then to be given in two days. I did not give the word *remove* due consideration, but never thought the decision of the arbitrators was to be delayed by order of the United States consul. I have refused to remove, and it was and still is my thorough determination not to allow the mill to go off the ground till my claims were satisfactorily settled, and I even begged the United States consul, Mr. W. P. Mangum, to assist me and have the matter satisfactorily settled, so that there would be no trouble hereafter; the only answer I could get was that "the letter written by R. J. McCaslin, seen and agreed upon by Adrian, was all I required;" on the strength of that, I allowed the men to work removing the machinery belonging to the mill, so that it might go off my ground when I was satisfactorily secured according to the arbitrator's decision.

As to the question of damages and demurrage for detention of brig Nogie, the defendant has good reason to believe that the brig is sold to Japanese, and is not the property of Adrian & Co., and is bound to Osaka if she takes the mill or not; secondly, that she is not yet loaded, but is awaiting for other cargo, and consequently is not detained at all to receive the mill.

If the court award damages, it should be against the mill, not against the defendant, who only wishes to be secured, and never engaged ship or freight with plaintiffs for said mill. The defendant further says that, as he has a lien on the mill for rent due and money expended, which mill is on his property and in his possession, there is no law of the United States, to his knowledge, which can compel him to give up this lien until he is properly secured.

The defendant further states that, from the discrepancy of the statements made by Messrs. Adrian & Co. and Mr. R. J. McCaslin, he has good reason to believe the intention of the parties is to deprive him of his lien. These letters are contained in the letters received, viz, the letters from McCaslin state that the mill is sold for five thousand five hundred dollars, supposed to be cash. Messrs. Adrian & Co., however, stated verbally that the mill is sold on a credit to Japanese, and also that they claim a commission. These transactions took place between McCaslin and Messrs. Adrian & Co., to which the defendant was no party; and if the defendant gives up possession, and the Japanese fail in payment, and also McCaslin, to whom is the defendant to look for payment without having some promissory note from responsible parties, or, as is usual in all cases in release of lien, to receive cash in hand? I have never delivered the keys of the mill unless on a receipt that they are to be delivered at my request.

The arbitrators in the case of defendant and McCaslin being ordered to withhold their decision, and Adrian & Co. refusing the security asked, the defendant holds his lien in said mill, and is ready, and always has been, to deliver it to any responsible parties either on receipt of award of arbitrators or proper security, satisfactory to him that it will be paid.

To avoid endless litigation the defendant has offered to take the lowest amount awarded him by the arbitrator for McCaslin, and leave the balance in dispute in the hands of the plaintiffs until a final decision is given by the third arbitrator chosen.

The defendant further states that he is not acting for himself altogether, but for the firm of G. W. Lake & Co. His partner also refused to deliver possession until the money awarded, or to be awarded, in the case of McCaslin is either paid or properly secured, and respectfully asks the following witnesses for his defense to be summoned, and their evidence taken under oath, viz: Captain Cowan, of brig Magie; Mr. Robertson, of Messrs. Boyd & Co.; Mr. John Maltby, of Messrs. Maltby & Co.; Mr. Brunier, of Messrs. Case & Co.; Captain J. U. Smith, of Nagasaki.

G. W. LAKE.

Signed and sworn to before me this 8th day of May, 1869.

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 17.]

No. 24.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 7, 1869.

SIR: It has been a week to-day since an extension of time was granted you to give in your answer in the flour-mill case; although you were warned at the time to make no unnecessary delay, more than ample time has now been allowed you, and I have to inform you that if you do not appear by 11 o'clock a. m. to-morrow, the 8th instant, to give in your answer under oath, I shall proceed to give judgment against you by default.

Very respectfully,

WILLIE P. MANGUM,
United States Consul.

GEORGE W. LAKE, Esq.

[Inclosure No. 18.]

NAGASAKI, May 7, 1869.

To the United States Consular Court :

SIR: In answer to your letter of this date, No. 24, I beg to inform the court that I did appear at the United States consular court at 11 o'clock a. m., as per summons, dated April 26, and found the court-room door locked, and it continued locked up to the time I left to go home at 11 o'clock 45 minutes a. m. Plaintiff did not appear at the consulate. I was prepared to hand in my statement under oath, but as there was no court on the date of April 30, at 11 a. m., I consider the plaintiff is the defaulter.

I am prepared and always have been to deliver up the flour-mill now in dispute on receipt of the amount due me for erecting said mill and rent due; but as the money, as per the lowest arbitrator decision, and even good security, satisfactory to myself, is still refused, I will not deliver over my lien until I am satisfactorily secured against loss and all liabilities of hereafter litigation.

G. W. LAKE.

W. P. MANGUM, Esq.,
United States Consul.

[Inclosure No. 19.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 13, 1869.

UNITED STATES }
 vs. } Commitment for contempt.
GEORGE W. LAKE. }

To L. M. Dent, Esq., Marshal of said Court :

SIR: In the name of the United States forthwith commit George W. Lake, of Nagasaki, to jail for twenty-four hours, and collect of him \$50 fine, for his contempt of this court and of the United States, committed to-day, by refusing to obey the order of this court to deliver up, on demand, the keys of the flour-mill situated on his premises, in order that said mill be removed in compliance with the judgment pronounced in this court, on the 12th instant, in the case of H. Schiff, representing Messrs. Adrian & Co. *vs.* George W. Lake.

And if George W. Lake does not, on demand, pay said fine and the costs taxed at \$15.50, with your legal fees, you will imprison him for thirty (30) days more, for all which this shall be your sufficient warrant.

Given under my hand and seal of the United States consulate this 13th day of May, 1869.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 20.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 13, 1869.

To L. M. Dent, Marshal of said Court :

SIR: You are hereby commanded to attach the body of George W. Lake, if found within this consular jurisdiction, and bring him before this court to answer a contempt by him committed in not obeying the order of this court to deliver up, on demand, the keys of the flour-mill situated on his premises, in order that said mill be removed in compliance with the judgment pronounced in this court on the 12th instant, in the case of H. Schiff, representing Messrs. Adrian & Co. *vs.* George W. Lake; and of this writ make due return.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 21.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 13, 1869.

UNITED STATES }
vs. } Charged with committing contempt out of court by refusing to obey
GEORGE W. LAKE. } its order.

Before Willie P. Mangum, United States consul, acting judicially.

Summary proceedings.

SIR: The prisoner was arrested and arraigned upon affidavit of Ferdinand Plate, to the effect that he (the prisoner) had refused to give up to him, when he demanded them, the keys of the flour-mill, situated on prisoner's premises, in accordance with the judgment of this court, in the case of H. Schiff, representing Messrs. Adrian & Co. *vs.* George W. Lake, delivered in this consular court on the 12th instant, although he (the prisoner) well knew that said Ferdinand Plate came in the name and by the order of plaintiff in the above-mentioned case to take possession of a right granted by the judgment of this United States consular court above referred to.

Prisoner was sentenced for this contempt of court and of the government of the United States to be imprisoned twenty-four hours in jail, and pay a fine of \$50, together with costs, and if, on demand, he should refuse to pay such fine and costs, to be committed for thirty days more.

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 22.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 13, 1869.

Ferdinand Plate, being duly sworn, says that he was ordered this morning by Mr. Schiff, of Messrs. Adrian & Co., to call on George W. Lake and demand of him the keys of the flour-mill situated on his premises, in order that he might proceed to have said mill removed, in compliance with the judgment delivered in the United States consular court on the 12th instant, in the case of H. Schiff, representing Adrian & Co., *vs.* George W. Lake; that said George W. Lake refused to deliver said keys when he asked for them, saying that he would wait until the United States admiral should arrive; that the court was not regular that tried the case.

FERD. PLATE.

Signed and sworn to before me this 13th day of May, 1869.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 23.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 15, 1869.

To L. M. Dent, Marshal of said Court:

SIR: You are hereby commanded to proceed to the residence of George W. Lake and make diligent search for the key of the flour-mills situated on the premises of said George W. Lake, and, when found, to deliver said key to the agent of the plaintiff in the case of H. Schiff, representing Messrs. Adrian & Co., *vs.* George W. Lake, which was heard and decided in this court on the 12th instant, in favor of the plaintiff. If the key is not found at the residence, search the body of said George W. Lake; and of this writ make due return.

[U. S. CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul, Acting Judicially.

[Inclosure No. 24.]

NAGASAKI, June 15, 1869.

DEAR SIR: I beg to remind you that I have applied to Messrs. Adrian & Co. for the payment of the sum of money due me by the decision of the arbitrators between myself and R. J. McCaslin for the owners of the flour-mill.

You mentioned before the court, on the 12th of April, that the security (H. Schiff's letter and R. J. McCaslin's letter) was good and sufficient security. Will you please let me know who is to pay the interest on this money? Am I to look to you individually, or to Adrian & Co.? If you do not intend that I shall be allowed to receive the money honestly due me, please inform me, and you will greatly oblige

Yours, respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,
United States Consul.

[Inclosure No. 25.]

400.]

Received from Edward Lake, for G. W. Lake, the sum of four hundred dollars, (Mexican,) amount of damages against said G. W. Lake in a suit, H. Schiff, representing Messrs. Adrian & Co., *vs.* G. W. Lake, for refusal to deliver a certain flour-mill according to agreement.

Nagasaki, May 14, 1869.

L. M. DENT,
United States Marshal.

\$84.55.]

Received from Edward Lake, for G. W. Lake, the sum of eighty-four dollars (Mexican) and fifty-five cents, being amount of costs of court in above case of H. Schiff, representing Messrs. Adrian & Co., *vs.* G. W. Lake.

L. M. DENT,
United States Marshal.

[Inclosure No. 26.]

69.50.]

Received, Nagasaki, May 15, 1869, from Edward Lake, for George W. Lake, the sum of sixty-nine dollars and fifty cents, being amount of fine and costs for a second contempt of court in a suit, H. Schiff, for Adrian & Co., *vs.* G. W. Lake.

L. M. DENT,
United States Marshal.

[Inclosure No. 27.]

\$65.50.]

Received from Edward Lake, for G. W. Lake, the sum of sixty-five dollars (Mexican) and fifty cents, being amount of fine and costs for contempt of court in George W. Lake refusing to obey order of the United States consular court, in a suit of H. Schiff, representing Messrs. Adrian & Co., for damages in refusing to deliver a certain flour-mill.

L. M. DENT,
United States Marshal.

[Inclosure No. 28.]

No. 51.]

CONSULATE OF THE UNITED STATES,
Nagasaki, July 7, 1870.

SIR: I have the honor to acknowledge the receipt of your dispatch No. 43, of May 20, 1870, with its inclosure containing a note from the Hon. Benjamin F. Butler, a letter from certain parties "selectmen" of Topsfield, and two letters from the brothers George W. Lake and Edward Lake, setting forth certain wrongs that they complain of having received at my hands in Nagasaki.

In reply, I have to say in the first place that these two letters of the brothers Lake are most villainous perversions of the truth, and beg to submit the following explanation, to wit: In the spring of last year a suit was instituted in this consulate against George W. Lake by Messrs. Adrian & Co., a Belgian firm in Nagasaki, to recover damages for the non-fulfillment of a contract and to compel fulfillment of the same. This contract was to the effect that Messrs. Adrian & Co. should sell on commission for the sum of \$5,500, and remove the same, a certain "flour-mill," situated on the premises of G. W. Lake, and owned by him and one R. J. McCaslin, of Shanghai, and retain this money in their hands until the dispute between Lake and McCaslin as to the amount each was entitled to receive of the proceeds of this sale should be decided by arbitration. In compliance with this, Messrs. Adrian & Co. effected the sale of the mill to certain Japanese residing at Osaka, and proceeded to remove it to be transported to Osaka. At this juncture, Lake, in defiance

of his contract, stepped in and stopped the removal by taking the key from the agent in charge, and locking up the mill. Hence the suit.

The case was tried before me with the requisite assessors, on the 12th of May, 1869, and judgment given for the plaintiffs. The defendant contumaciously refused to comply with the judgment and obey the orders of the court. For this contempt, he was summarily punished by a fine of \$50 and imprisoned for twenty-four hours. He repeated his contempt after his release, and was again summarily punished in the same way.

The judgment of the court was enforced; the mill was removed and transported to Osaka, to be delivered to the purchasers. In due time the arbitrators who were to decide upon the respective claims of Lake and McCaslin, made their award, and the price of the mill, which was stipulated to be paid on its delivery at Osaka, was received by Messrs. Adrian & Co. In the mean time a third party appeared, Messrs. H. Fogg & Co., of Shanghai, by J. F. Twombly, claiming an interest in this mill-property as part owner, and holding certain charges against it to the amount of some twelve hundred taels, equal to about \$1,600, for auction-expenses, storage, &c., in Shanghai, whence Lake had brought the mill.

The arbitration showed that Lake had expended a large sum of money in erecting the mill and running it, for which he had been only partially refunded by the proceeds of the sale of the flour, leaving the sum of \$2,971.57 actually paid out of his own pocket. This amount the arbitrators awarded to him, and the residue of the \$5,500, to wit, \$2,528.43, to be equally divided between him and McCaslin. The award was made on the 27th of May, and the money for the mill received by Messrs. Adrian & Co. from the Japanese purchasers on the 15th of July following.

They immediately informed me of its reception, and I forthwith instructed them to pay over to Lake the \$2,971.57, and to retain the residue, \$2,528.43, pending the investigation of the claim of Messrs. H. Fogg & Co. Before this money was received by Messrs. Adrian & Co., G. W. Lake went away from Nagasaki, leaving his brother, Edward Lake, in charge of his business.

Finally McCaslin settled the matter as far as he was concerned with Messrs. H. Fogg & Co., in Shanghai, by an amicable compromise, and it then became narrowed down to a claim against Lake for about \$800, and this was eventually settled by Edward Lake paying to Drummond Hay, agent appointed by Messrs. H. Fogg & Co. to attend to this business, \$400.

I had advised both parties to settle this matter amicably out of court, but at no time made mention of any sum that I considered fair to offer or receive. The proposal by Lake to pay \$400 was entirely voluntary on his part. Hay at first refused to accept this amount, and only after considerable delay and with much reluctance did he finally assent to it.

When Lake first told me that he had proposed to compromise by paying \$400, but that Hay had refused to accept this sum, he not only expressed his willingness to settle the matter in this way, but appeared anxious to have it done, and at no time did he ever express an objection, as far as I am aware, to paying this amount after his first proposal to do so.

Under such circumstances, the idea that Lake was compelled by me to "sacrifice" \$400 is so glaringly preposterous that it could only have originated in the distempered imagination of such a creature as Edward Lake or his brother.

In the above-mentioned case of Messrs. Adrian & Co. vs. G. W. Lake, the assessors unanimously assented to the consul's decision; consequently the decision was final. (Vide section 10, act of Congress, June 22, 1860, giving judicial powers to ministers, consuls, &c.) The law on this point was fully explained to Lake, and he well knew that he was not entitled to an appeal.

The Captain E. Tolman, mentioned in the letter of G. W. Lake, and whose punishment by imprisonment and subsequent deportation has aroused so much indignation in his bosom, was one of the most violent and desperate of all the foreign population of Nagasaki, and a man of whom the natives stood in great dread. He had several times been arraigned before the consular court and punished, and, on the occasion referred to, the offense which Lake styled "a simple assault and battery" was the beating an inoffensive Japanese boatman in the most brutal manner, and injuring him to such an extent that he was unable to walk about for several days. When Tolman was arrested for this offense, he threatened to shoot the marshal, and at the trial carried into the court-room concealed upon his person a loaded revolver, which was taken from him and found to contain five ball-cartridges.

This man Tolman and the Lakes were intimate friends and companions, and among such characters here the Lakes appeared to find their most congenial associates, all of them "birds of the same feather," men of low instincts and associations, ignorant, suspicious, headstrong, and lawless, frequently getting into difficulties and never hesitating to pervert the truth to suit their purposes.

G. W. Lake, by his lawlessness, forfeited several years ago his right to reside in Japan, and only by sufferance did he remain here. The forbearance that has been extended to him in not having the law enforced, and allowing him to remain in the country in consideration of his youth, with the hope that more age and experience would teach him to correct his evil propensities, he has proved himself unworthy of and utterly incapable of appreciating. If strict justice had been dispensed to him he would have been deported long ago. The consciousness of this fact, with perhaps an uneasy feeling that if he should return to Japan

he might not be allowed to continue in the country, may have something to do with his extreme anxiety about my remaining at Nagasaki.

I quote from the court records of this consulate the following offenses for which he has received judicial punishment, to wit: June 16, 1863, charge of assault and battery on the person of Levi N. Burdick; fined \$25 and costs. Aug. 31, 1865, charge of assault and battery with a dangerous weapon upon a Japanese; complaint lodged by the native authorities. As this case was especially of a heinous character, I quote the decision of the court in full, marked inclosure No. 1. September 28, 1866, charge against both Geo. W. and Edward Lake of assault and battery on one John Brown; convicted, but under extenuating circumstances, and fined \$1 each with costs. July 10, 1867, charge of unlawfully detaining and wounding a Japanese officer, sentenced to a fine of \$25 and imprisonment ten days, and again warned that he had forfeited his right to reside in the country. On the way to jail under this sentence he escaped from the marshal by drawing a revolver and threatening to shoot him; was concealed some days in the vicinity of Nagasaki by his friend, the aforesaid Captain Elias Tolman, and then smuggled by him on board a steamer bound for Yokohama. He staid awhile at Yokohama, thence proceeded to China, and after skulking about for several weeks, returned to Nagasaki, was re-arrested and imprisoned for his allotted term. He was also implicated in smuggling at an unopened port in the spring of 1867, on the ship Anne Kimball, of which he was the charterer. The case was heard June 5, 1867, and the ship fined \$1,000. (Vide treaty.)

G. W. Lake was registered at this consulate September 12, 1860, and Edward Lake September 10, 1862. They were both boys at the time of their arrival. Their occupation has been that of butchers, compradores, and general traders. The latter still resides here, and the former up to the summer of last year, (1869,) when he left for Yokohama, and thence proceeded to the United States, where he arrived, I suppose, some time in the autumn. So he must have been absent from Topsfield nearly ten years, living all that time, with the exception of the few months spent in the voyages from and back again to America, in a foreign land some twelve thousand miles away.

I beg to place these facts together with the court records by the side of the letter of the "select-men" of Topsfield, who so confidently vouch for the good character of Geo. W. Lake, they "having known him from his earliest days."

I have the honor to be, sir, your most obedient servant,

WILLIE P. MANGUM,
United States Consul.

Hon. J. C. B. DAVIS,
Acting Secretary of State, Washington.

[Inclosure No. 29.]

DEPARTMENT OF STATE,
Washington, September 3, 1870.

SIR: Referring to the letter addressed to you from this Department on May 20 ultimo, I have the honor now to inclose a copy of a dispatch, No. 15, dated July 7 last, from the United States consul at Nagasaki, Japan, and of its inclosures, in reply to the charges preferred against him by G. W. Lake, and by you laid before this Department.

I have the honor to be, sir, your obedient servant,

J. C. B. DAVIS,
Acting Secretary.

Hon. BENJ. F. BUTLER,
Lowell, Mass.

List of inclosures.

Dispatch No. 51, dated July 7, 1870, from the United States consul at Nagasaki, Japan.

[Inclosure No. 30.]

Copy of evidence.

W. P. MANGUM, called and sworn, testifies as follows:

I am United States consul at Nagasaki. Have been acting as such since September 27, 1865. During 1867 and to the 19th of April, 1868, I was in Shanghai, acting United States vice-consul-general, leaving Mr. Moore in charge of the Nagasaki consulate as vice-consul. In 1869 I was acting as consul at Nagasaki. Mr. Dent was acting marshal. I know defendant. He then resided there. He was registered there, I think, in September, 1860, and resided there until in July, 1869, when he visited the United States, as I understood. He was

again there last spring. His house is there, G. W. Lake & Co., and has been constant going on, and that place is in fact his residence. United States citizens register only once. I am not aware of the existence of a regulation requiring yearly registration of citizens. Mr. G. W. Lake never registered but once in my consulate, and that was in 1860. The agreement between the plaintiff and R. J. McCaslin to arbitrate certain matters about a flour-mill was entered into, I think, in April, 1869. Witness produces the original agreement to submit to arbitration, which is read to the court, dated April 7, 1869. (Copy offered in evidence, marked Exhibit No. 1.) That paper is one of my consular archives. This was not executed in duplicate. I do not recollect the date of my order directing the arbitrators to temporarily suspend their action as stated in my answer. I simply wrote a note directed to the gentleman selected as umpire, requesting him to hold in abeyance a decision until certain matters should be settled relative to this flour-mill. This was equivalent to an order. He was a British subject. I had no personal jurisdiction over him, but he acted under it. I did this to save the forms of going through the British court with an application. I had no interview with him personally about the subject; he acted under it and refrained from giving an award. There was a case then pending between Adrian & Co., represented by Mr. Schiff and Mr. Lake, relative to a flour-mill. I am not positive whether this suit had then been actually commenced or only mentioned to me as to be commenced. I now state positively that that order was made after this action was commenced; I feel certain that it was: the defendant's answer in that action was filed May 8, 1869; the case was tried May 12; the petition was filed 26th April, 1869. This order was made at the application of Mr. Schiff, but there was no memorandum made in the court record-book. This order was given on the fact that Messrs. Adrian & Co. reported to me that the plaintiff had refused to carry out his agreement in regard to the flour-mill that was in dispute, and this order was given to withhold the suit until the award should be given in regard to the dispute between Mr. Lake and Mr. Schiff. This order was conditional until this difficulty should be satisfactorily settled by the umpire, the arbitrators having disagreed. There was a flour-mill on the premises of the plaintiff at Nagasaki owned by Mr. Lake and R. J. McCaslin. The flour-mill was purchased in Shanghai from R. J. McCaslin and brought to Nagasaki; at that time an agreement had been made between Lake and McCaslin with regard to their respective interests in this mill; some time after the mill had been erected and working on Mr. Lake's lot a dispute arose between Lake and McCaslin in regard to it, and, finding that the arrangement was not a paying one, it was settled by McCaslin, as part owner, entering into an agreement with Adrian & Co. to sell this mill for \$5,500, which agreement was acceded to by Mr. Lake himself. The flour-mill was to be removed by Adrian & Co. and delivered to the purchasers, who were Japanese, at Osaka, it being understood that the purchase-money was not to be paid until the mill was delivered at Osaka, when the money was to be remitted to Nagasaki by Adrian & Co. While Adrian & Co. were proceeding to remove the mill, the plaintiff in this action interfered to prevent it, and, in consequence, Messrs. Adrian & Co. commenced a suit. After that arrangement had been entered into to sell the mill for \$5,500, this agreement to settle their differences by arbitration was made, they having lost the original written agreement made. The matter under arbitration was what portion of the purchase-money should belong respectively to Lake and McCaslin. The action at law was to compel Mr. Lake to carry out the agreement made for the sale of the mill by Adrian & Co. to the Japanese. The order was made to the arbitrators to defer any decision as to the relative shares of the purchase-money until the agreement for the removal and sale of the mill was carried out and the money realized. (Plaintiff offers in evidence written petition, with its indorsements by Adrian & Co., on which the cause was founded, Exhibit No. 2.) Agreement No. 1 was left in my office for safe-keeping, the day of the date. I considered the arbitration to be under my direction, and consider that it was so understood by the parties. The order to the umpire to suspend proceedings is not noted in my court record-book. (Witness read letter dated November 17th, from his consular letter-book, which plaintiff filed, Exhibit No. 3.) Counsel for plaintiff calls attention to the fact that there appears to be an alteration in the original numbers of the letters in the book; witness stated, miscellaneous letters are copied in one book, and departmental ones in another. (Counsel for plaintiff read letter November 18, Exhibit No. 4; this is the order to the umpire to suspend proceedings already referred to.) Fogg & Co. claimed that they owned one-third of the mill, and on this application the order was founded in connection with what has been already stated. No application for this order was made to me in writing, to the best of my memory. I considered that I had authority to issue this order, without formal application in writing, in the form in which I did it, the object being to facilitate the settlement of the dispute and protect the rights of all parties. The parties had been before me with reference to the arbitration, and I, in my capacity as consul, was endeavoring to arrange the difficulty between them. I consider that I have a right as consul to issue an order such as the one referred to. I consider that my position as consul, and the general powers given me as such, authorize me to give such order, but I cannot point to any specific instruction to that effect, excepting the one instructing me to use my influence to have difficulties settled out of court, if possible, in an amicable manner, to prevent litigation. I have already stated that no formal written application was made to me for this order to the best of my memory. Exhibit No. 3 shows that I had received a letter from Mr. Twombly, which is still on the files in the office.

By the term "withholding the award" I intended to postpone the award until this dispute between Adrian & Co. and Mr. Lake was settled, and until Mr. Twombly's claim was investigated. I do not recollect the date at which the mill was sold by McCaslin. Mr. McCaslin informed me that he had sold the mill, and Mr. Lake afterward told me he had assented to it; I do not recollect when Mr. Lake told me he had assented to the sale. Mr. Lake assented to this sale verbally, in my presence, and when the mill was being removed he came to me and said he thought they were trying to get the better of him. I told him that his interests could not be jeopardized under the circumstances; that he was dealing with an honorable house, and with a gentleman who I was sure would not, under any circumstances, take advantage of him; but that as he seemed to feel uneasy about the matter I would send my marshal to the mill to tell the persons who were in charge of the removal of it to stop for the present until his mind should be satisfied in regard to it, and advised him to go immediately to Mr. Schiff, the head of Adrian & Co., and come to some definite, satisfactory arrangement about it. He was satisfied with this. I sent the marshal immediately to stop the removal, and Mr. Lake went immediately to Mr. Schiff.

The marshal went to the agent of Mr. Schiff who was removing the mill, and told him from me to proceed no further with the removal until he should hear further from me, and he stopped. Mr. Lake in the mean time proceeded to Mr. Schiff and made an arrangement with him, and after the interview he returned to my office and expressed himself perfectly satisfied that the mill should be removed; that he had assurances from Mr. Schiff, of Adrian & Co., which were satisfactory to him. I then had the agent who was in charge of the removal of the mill informed that he could continue removing it, which he commenced to do. Either the next day or the day afterward Mr. Lake took another suspicion in his mind that something was wrong, took the key of the mill away from the person who was in charge of the removal without consulting me at all, and declined to have the removal continue. I was informed of this by Adrian & Co., and told Mr. Lake that he had done wrong in stopping the removal, and that he laid himself open to an action for damages for the illegal course he was pursuing. He persistently continued in the same course, and then Mr. Schiff commenced the suit. (Witness produced and read a letter dated 15th April, 1869, from Adrian & Co. to G. W. Lake & Co., given to him in evidence in the suit, *Adrian vs. Lake*, which is filed as Exhibit No. 5.) I recollect distinctly the circumstances of the conversation with Mr. Lake. I think the conversation took place in the forenoon. I do not recollect the time distinctly, but think both conversations took place during the forenoon. I do not recollect whether I sent the order November 17, directly after this interview. I do not recollect whether I sent the same day or not. I presume that I informed Mr. Lake that I was going to stop the arbitration, but I do not recollect; I do not recollect that I said anything to suggest to him that the arbitration would be stopped. I had not then issued the order. That's my impression. I think, that the first knowledge I had of any of these disputes was in April and May, 1869. I had not the slightest pecuniary interest in the mill, nor in anything connected with it. The letter of Mr. Twombly, already referred to, was the first knowledge I had of the dispute, but Mr. Twombly may have spoken to me before, but it must have been a very short time before, either the same day or the preceding one. The application was made by Mr. Twombly on account of his firm, H. Fogg & Co., I believe. I do not know the names of the partners in that firm. I do not recollect of any previous business with Mr. Lake about the mill, but he may have consulted me previously, and in fact I believe that I suggested to Mr. Lake to settle the disputes by arbitration. (Plaintiff produces a letter dated November 25, 1868, No. 146, from witness to G. W. Lake, which is filed as Exhibit No. 6.) I do not recollect whether the Mr. Fobes, referred to in the letter, was, at that time, in business as a merchant in Nagasaki for himself or acting as agent for Fogg & Co., or he may have been acting as attorney for McCaslin; I do not recollect; I do not recollect whether Mr. Fobes, either as agent for anybody or for himself, ever informed me that he had a claim on the mill, but it is evident by the letter produced that he must have done so.

In writing November 6, I may have referred to Fogg & Co., or McCaslin. I believe that Fogg & Co. were interested in that mill as part owners, and I hold the letter in which Lake stated to McCaslin that he admitted that Fogg's claim was "no good," as he expressed it, except for one-third. (Letter produced by witness from G. W. Lake to R. J. McCaslin, dated 27th July, 1869.) I do not recollect whether this was the first I knew of Fogg & Co.'s claim, or whether Fobes acted for Twombly or not. Mr. McCaslin was a resident of Shanghai, and only visited Nagasaki occasionally. I do not recollect what effect was produced by my order, nor do I remember the case until it was brought before me in the following spring. This order was issued by me in my capacity of consul. I have not the slightest recollection of anything that took place in this matter, until it was renewed in the following spring. I do not recollect whether the parties referred to in the letter were informed of anything afterward. I had reasons to believe that Mr. Lake was a part owner of the mill, and in possession of it. The final award of the arbitrators is dated 27th May, 1869. (Witness produced the original award which is filed as Exhibit No. 7, signed by the two arbitrators, and not by the umpire, and explained as follows: :) That the original agreement between Lake and McCaslin having been discovered during the award, witness suggested to the two original arbitrators that they should take said agreement for their basis, when there appeared to be no difficulty in deciding the matter. The arbitrators did this and

concurred in the award produced. This award was filed in my consulate. I had instructed them to do so, and I purposed seeing the award duly executed. As soon as the award was made known to me, and when the money was paid, I directed the sum of \$2,971.57 to be paid to Mr. Lake, and the balance to be retained until he heard further from me, pending the adjustment of Messrs. Fogg & Co.'s claim, which had been at that time filed in the consulate. The balance referred to is the balance referred to in the award. The date of the order to Mr. Schiff was about the 15th July, 1869, on which date the money was received in Nagasaki, as informed by Mr. Schiff. The money was retained for some months, and was paid in accordance with the award subject to the payment of a sum of money by Lake to Fogg & Co., which had been found to be due to them by agreement between Lake & Co. and themselves, according to my advice, to settle the money out of court. (Witness produced the claim filed by Messrs. Fogg & Co. against the mill.) I received this claim from Messrs. Fogg & Co. The claim produced is filed as Exhibit No. 8. This claim was never adjudicated upon. I do not recollect on what day I received it, but it must have been some time after the trial of the other action. I have not on file a copy of the order to Adrian & Co., stopping the money provisionally. As Mr. Schiff was consul for Denmark, I did not address him an official order, but merely wrote him a request as from one colleague to another, to retain the money until he heard further from me. (Witness produced consular record-book, page 352, and reads: "Judgment pronounced in the case of Adrian vs. Lake, for \$400. Specific performance of the contract and costs, \$84.55; filed as Exhibit No. 9.") This judgment has been satisfied, but there is no record of the same, otherwise than the statement in the book. The sums were paid by Mr. Lake. The portion of the judgment as to giving up the keys was not complied with by Mr. Lake, neither were the amounts adjudged paid by him, to the best of my recollection, until after he had been imprisoned for contempt of court. The judgment was delivered in the presence of Mr. Lake, and he was verbally ordered to comply with it, but no decree or writ was issued in pursuance of it. I was made acquainted that the judgment had not been complied with by an affidavit of Adrian & Co. This affidavit is in the record of part of the proceedings against Mr. Lake for contempt of court. Mr. Lake, in addition to the sums for which the judgment was given, was afterward fined \$50 each, in two cases of contempt of court, the costs in each case amounting to \$15; total, \$65 in each case. Mr. Schiff called on me to consult me and I told him that if Mr. Lake persistently refused to carry out the contract, the only way to compel him to do so was by a suit in court. And I also wrote to Mr. Lake warning him that he was laying himself open to an action for damages. I have no copy of the contract referred to, as I believe that it was more verbal than written. (Witness produced copy of a letter written by R. J. McCaslin to G. W. Lake and signed by Adrian & Co., filed as Exhibit No. 10.) This letter was the one to which Mr. Lake expressed his assent in my presence, and on which assent they commenced to remove the mill. This and Exhibit No. 5, are, I believe, the only written evidences of the agreement as to the sale of the mill. (Plaintiff produced letter from Mr. Mangum to Mr. Lake directing him not to interfere in stopping the removal of the mill, dated 17th April, 1869, filed as Exhibit No. 11.)

To the court: I ask for production of the letter from Mr. G. W. Lake to Mr. McCaslin, dated 27th July, 1869, admitting the indebtedness to Fogg & Co., (Exhibit No. 12.) There were to be two arbitrators chosen on the award, and in the event of their disagreement, an umpire was to be appointed. This umpire had been chosen on the original disagreement. The umpire complied with my instructions, and did not render any decision. Subsequently the original written agreement was discovered, and the arbitrators then proceeded to an award, which they did without any difficulty, and which has been produced. The umpire chosen never rendered any decision that I heard of. There was not any mortgage or lien registered in the consulate except as to the supposed owners.

JOHANNES BRUINIER, called and sworn, testifies as follows:

I recollect this case in which I agreed to act with Mr. Smith as arbitrator in the dispute between Mr. Lake and Mr. McCaslin. The umpire chosen was Mr. John Maltby. I cannot recollect the day on which we found that we could not agree, but it was shortly after we were appointed. I do not recollect the amount of difference between our opinions as to what each party ought to have. The two arbitrators and the umpire never met together to confer. The principal differences were caused by Mr. Lake claiming interest, go down rent, &c., to which I would not give in. After the difference, the umpire did nothing, as he was requested by Mr. Mangum not to proceed further, as Fogg & Co.'s claim was put in. I do not know that he did anything to defendant. The amount first proposed to be awarded by the witness was the same as that finally agreed upon. After seeing the original agreement, the other arbitrator agreed to this first proposal. There was no difficulty in coming to an agreement after Captain Smith saw the original agreement.

JOHS. BRUINIER.

HERMAN SCHIFF, called and sworn, testifies as follows:

The first that happened was that Mr. McCaslin sold me the mill, which was put up in the compound of Lake & Co. When I sent round to show the mill to the Japanese—Lake always gave the keys to let me show the mill to the Japanese—when we had settled the bar-

gain, I sent an engineer to the place where the mill was to have the pieces of the engine numbered before they were taken away, and at the same time engaged a ship to carry the machinery to its place of destination. When the engineer commenced to take down the engine, he was stopped by Mr. Lake from further taking down the machinery, and I went to Mr. Mangum, his consul, to complain about it. Mr. Mangum told me at that time that he would send for Mr. Lake, to advise him to let me take away the machinery, without further delay. After several days, not being able to go on with the work of taking down the mill, I sued Lake in the American consulate, for damages, and for non-fulfillment of agreement. Mr. Lake expressed himself perfectly satisfied with agreement made between McCaslin and myself for the sale of the mill; gave his consent to its removal, and said he would go and see Mr. Mangum about it, and so expressed himself in my presence. He gave up the key to my agent, in pursuance of this agreement, and my agent commenced to remove the mill. I do not recollect how many days intervened between his expressing himself satisfied with my statement and the stoppage of the removal of the mill. The machine was to be delivered over at Osaca, before the money was to be paid and remitted to Nagasaki.

H. SCHIFF.

The court stands adjourned until Friday, the 15th instant, at 10 o'clock p. m.

Action No. 2.

The court, on motion of plaintiff's counsel and the consent of defendant, ordered that all evidence adduced on the previous trial be considered as applicable to the present one so far as it may be of use or desired by the parties.

W. P. MANGUM, called and sworn, testifies as follows :

I saw the original agreement between the parties upon which the award was afterward decided. [Witness produces the original agreement between G. W. Lake & Co. and R. J. McCaslin, filed as Exhibit No. 13, not dated, but acknowledged by both parties.] This contract was not known of or produced in evidence in the trial *Adrain vs. Lake*. When the arbitration was signed before me the parties stated that the original contract could not be found. I do not recollect when Mr. Lake placed his account, in my hands, but they were all handed to me. I do not recollect whether it was before or after Fogg & Co.'s claims. I have no evidence by which I can tell why Fogg & Co.'s claim made a stronger remembrance on me than Mr. Lake's. I cannot say why, but I think it was about the time of the dispute about the mill that Fogg & Co.'s papers came before me, and therefore they made a stronger impression on my mind. I suppose Mr. Lake handed the accounts to me to show how they stood. I presume he came to consult me in regard to the matter. [These accounts of G. W. Lake & Co., with respect to the flour-mill, were produced by witness and filed as Exhibit No. 14.] My advice to Mr. Lake, after he put his claims in my hands, always was to settle the matter amicably by arbitration, as, without the original agreement, I could not understand what were his and McCaslin's respective claims. I wrote the letter of November, 1868, because Mr. Fobes informed me that other parties had claims on the mill, and it was done to protect their interests, as Mr. Fobes said, that Mr. Lake was going to sell the mill. My sole object in writing the letter and stopping the arbitration was to protect the claims of third parties whom Mr. Fobes represented as having an interest in the mill. I have not Mr. Fobes's letter here; it is on file at the consulate. [Counsel for plaintiff produces copy of letter from G. W. Lake to W. P. Mangum, dated 16th April, 1869, filed as Exhibit No. 15.] I do not recollect replying to that letter. [Witness produces answer of Mr. Lake in suit of *Adrain vs. Lake*, filed as Exhibit No. 16.] I was in my office daily, and when I was out my marshal was generally there. The endorsement of the date of filing is in Mr. Dent's writing. I saw it on the day that I had ordered him to file it, but it was not then filed. He brought the answer to me, and I read it, and told him that it was not a proper answer, and that he had many things in it which were improper in an answer, and I told him that it would put it in better shape to bring them in his statement. I told him that, as he had appeared with his answer, he had saved himself from default, and that I would extend the time to enable him to put his answer in proper form. He then left me, and he said he would do so, and I supposed he went away for that purpose. He did not, however, do so. After a few days he brought it back again in the same shape. I again explained the matter to him, and repeated my advice. But the third time he returned with it, and said could not do it any better, and I told him that as he could get no one to help him to take my advice and put it in better form, I would file it, and did so. After having this first conversation with Mr. Lake, he expressed himself satisfied and went away. He offered to make his oath to the answer when he came first. The conversation was not a long one, but was earnest on my part, as I meant what I said. I do not recollect saying a word to him about giving up the key, but spoke simply about the answer. I can't say, but I don't think it probable that I did so. [Witness produces order of N. P. Mangum on Lake to file an answer in *Adrain's* case, filed as Exhibit No. 17. Plaintiff offers letter from G. W. Lake to W. P. Mangum, dated 7th May, 1869, filed as Exhibit No. 18.] I do not recollect that I made any

special effort to settle the suit out of court, after the petition was filed, as I found that he would not listen to reason. I had explained the matter before this, but he would not take my advice, but persisted in his headstrong course. I did not order him out of the office when he filed his answer, but when he brought me the letter. This letter was in answer to my note. I think he brought it the day it was written and the answer was filed the next day. I think he did not leave the answer when he brought the letter. I cannot swear that it was filed on the 8th, but I believe it was so, irrespective of the date. I think the letter and answer were not delivered at the same time. I only ordered Mr. Lake out of the office when he attempted to force the letter upon me, and my impression is that it was the day before the answer was filed. Mr. Lake did not, to the best of my recollection, offer to pay the judgment in the Adrian case if I would allow the arbitration to go on, nor plead with me to that effect. I have no recollection of his pushing the matter of allowing the arbitration to proceed specially at any time. I have no memorandum of the date when the judgment was satisfied, and I do not recollect when it was paid. Unless the marshal knows, I do not know any one who could furnish that date. I think it was after the imprisonment. I think it was after the imprisonment, as he only agreed to part of the judgment and refused to satisfy the rest of it. [Witness produces the writ of commitment by which he was imprisoned, filed as Exhibit No. 19.] He was ordered to obey the judgment of the court; that was the order. Mr. Lake did not, to the best of his recollection, tender me the keys of the mill in court. I do not think he offered me the keys if I would give him a receipt for them. The judgment was to deliver to Adrian & Co., or whoever they might send for them. Mr. Lake was informed by other means than the judgment to whom to deliver the keys, as, when he was first arraigned before me for contempt, I told him that Messrs. Adrian & Co. were the persons who would demand the keys from him. Previous to that Mr. Lake was only informed by the judgment itself. Mr. Lake was brought before me by an attachment to the marshal to bring him before my court. [Witness produces writ of attachment on Mr. Lake for contempt, Exhibit No. 20.] I recollect perfectly the circumstances of that day. [Witness produces copy of court-docket containing proceedings of the arraignment for contempt, Exhibit No. 21, and original affidavit of Ferdinand Plate informing me that Mr. Lake had refused to comply with the order of the court, Exhibit No. 22.] The money for the satisfaction of the judgment was paid into court to the marshal. These papers are the complete record of the commitment. No testimony was offered or taken on either side except that affidavit. After this, Mr. Lake was sent to jail for twenty-four hours, and the fine collected. Mr. Plate went to him again and demanded the keys, and Mr. Lake swore that he would not give them up, and the same proceedings were again gone through and Mr. Lake committed a second time. I then issued a search-warrant, and put it in the hands of the marshal to find the key, but he could not do so, and he went to Mr. Lake in prison, and asked him where it was. The marshal brought me the key, and I handed it over to Messrs. Adrian & Co. The second proceedings for contempt were precisely similar to those in the first case. [Witness produces search-warrant, filed as Exhibit 23.] The record order of commitment is dated 15th May, 1869. The first time I ever saw the key was when it was brought to me by Mr. Dent under the search-warrant, but on reflection I think he did not give the key to me, but handed it to Mr. Plate. We had no special code of proceedings at that time, but we followed the rules and regulations of the State Department, and also the code of rules adopted in China. Under these rules, I think that a plaintiff who recovered judgment could get execution in 24 hours, or by 3 o'clock next day. I think that rule is in the code of rules for China. [Burlingame's rules.] There was no execution sued out on that judgment. When the judgment directed a specific act to be performed, I should say that if no execution issued, an order committing him for contempt of court was the proper mode. The record-book produced is a full record of the proceedings in my court before the new regulations were adopted. I have read the decrees published by the commissioners for China. I have taken the oath required by those regulations. It is filed in the court. It was administered by Mr. Walsh. I never received the protest of plaintiff produced, but Mr. G. W. Lake applied in court for an appeal, but I explained to him that, as the assessors unanimously agreed with the court, that under the law there was no appeal. I have a slight recollection since reading the above that Edward Lake did say something to me about delivering up the keys, but I am not positive. [Counsel for plaintiff produces letter from G. W. Lake to W. P. Mangum, dated 15th June, 1869, Exhibit No. 24.] After reading Mr. Plate's affidavit to Mr. Lake, I told him that I should decline to hear him, but should commit him on those grounds. I refused, when Mr. Lake acknowledged refusing to give up the keys, to hear anything further from him, but committed him for contempt of court.

Plaintiff's counsel now offers to prove, by this witness and others, the particulars of the making the order of deportation and those of a certain suit brought against Mr. Lake for bastardy, all being of recent date, several months posterior to the proceedings for imprisoning Mr. Lake for contempt, for the purpose of proving malice on defendant Mangum's part when conducting these contempt proceedings.

The court holds that evidence of malice existing at a subsequent period of time must of a consequence be secondary and of the fullest nature to establish malice at a prior date, and in the judgment of the court can only be allowed as corroborative testimony in support of direct and positive evidence in proof of malice existing at such prior date. There being no

such primary or positive evidence in this case, the court holds the evidence offered to be inadmissible for any purpose.

Defendant excepts.

To the Court: Mr. Lake was present when the judgment in Adrian's case was given, and I read the verdict to him in open court and directed him to obey it.

LEWIS M. DENT, called and sworn, testifies as follows:

I recollect the fact of going to the mill with Mr. Lake to stop the work, but not the date: I went to stop the work of taking the mill away. I went by Mr. Mangum's order to do so. I found that Mr. Wignall was in charge of the place and found him there. I told Mr. Wignall that Mr. Mangum had sent me to him to request him to stop the shipment of the mill for the time being. Mr. Wignall gave me the key and I locked the door and gave the key to Mr. Lake. I think I was not in the consulate when Mr. Lake came to file his answer. I do not recollect being there. I arrested Mr. Lake under these warrants. I do not recollect the date, but I remember arresting him. I went to his house and read the warrant to him. He went with me to the consulate and the consul read to him the documents on which he arraigned him, viz, his disobedience to the verdict, and committed him to jail, giving me a warrant to do so. That is all I recollect that occurred. Mr. Lake did not offer to give up the key to the consul on his giving him a receipt for it, to the best of my recollection; but he refused several times, in my presence, to give up the mill. I cannot say whether this was at the consulate. I arrested him twice. (Counsel for plaintiff produces the witness's receipts, filed as Exhibits Nos. 25, 26, and 27, for moneys received from Edward Lake.) I was present at the trial of Adrian *vs.* Lake. Mr. Lake was not, to my knowledge, ordered out of the court-room during the trial, nor was he, to my knowledge, ordered out before the trial. I think I was not present when the answer was brought to the consulate to be filed. I was out at the time, and on my return Mr. Mangum gave it to me to file. I never saw any difficulty or high words between Mr. Lake and Mr. Mangum about this time. I do not know of any. The prison in which Mr. Lake was placed was about 8 feet by 5 feet, and about 6½ feet in height, as near as I can recollect. For a Japanese jail it was cleanly and comfortable, being for Europeans, and not the same as the Japanese prisoners were placed in.

To defendant: Mr. Lake once said in my presence to Captain Williams in his own house that he "knew that he was wrong and foolish about this; but he would see it through, and Ned [his brother] wanted to see it through." He said it good-temperedly. I never saw anything wrong in Mr. Mangum's conduct to Mr. Lake. I never saw you act otherwise than kindly to him, when he came about his difficulties to the consulate, but I have heard very little, as he always went into your room.

Counsel for plaintiff handed in to the court a memorandum of his authorities on the legal question.

Action No. 3, called for trial, is submitted upon the introduction of a copy of the dispatch written by W. P. Mangum to the Assistant Secretary of State of the United States, (died as Exhibit No. 28,) and copy of letter from the Assistant Secretary of State to Benjamin F. Butler and other persons, with indorsements, (filed as Exhibit No. 29.)

The court stands adjourned until Tuesday morning the 19th instant at 10 o'clock a. m.

[Inclosure No. 33.]

In the ministerial court of the United States for Japan.

GEORGE WILKINS LAKE, PLAINTIFF, }
 vs. } Action for damages. Demand, \$5,000.
 WILLIE P. MANGUM, DEFENDANT. }

To His Excellency CHARLES E. DE LONG,
*Envoy Extraordinary and Minister Plenipotentiary
 for the United States in Japan:*

The plaintiff above-named, George Wilkins Lake, by G. W. Hill, his counsel and attorney, respectfully gives notice that he will appeal from the judgment rendered in the above-entitled action on the 19th day of December, A. D. 1871, to the United States circuit court for the district of California, and the plaintiff prays that thirty days be allowed to him in which to perfect such appeal, and that execution and all proceedings herein be meanwhile stayed.

G. W. HILL,
Plaintiff's Counsel.

YOKOHAMA, December 20, 1871.

Mr. De Long to Mr. Fish.

No. 223.]

UNITED STATES LEGATION,
Yokohama, Japan, July 17, 1871.

SIR: I beg leave to advise you of the receipt by me a few days since of a note from Willie P. Mangum, esq., United States consul at Nagasaki, (inclosure No. 1,) informing me of the receipt by him of a letter of complaint made by the governor of Nagasaki against one G. W. Lake, esq., (inclosure No. 2,) demanding that said G. W. Lake, on account of his several previous convictions of crimes, in the consular court at Nagasaki, should be compelled to leave the empire, in pursuance of the provisions of article 7 of the treaty between Japan and the United States; also, inclosing and calling Mr. Mangum's attention to the complaint made against said Lake by a Japanese woman, asking a judgment for the value of her services, performed for Mr. Lake during a period of years, as a domestic servant; and for an allowance to support a bastard child of said Lake's, born to him by her during the same period; which statement of the woman was connected with an affirmatory statement by the master of the village where the woman resides, (inclosure No. 3.)

With the same note Mr. Mangum also inclosed to me a copy of an official letter addressed by him to Mr. G. W. Lake, (inclosure No. 4,) in which he notified him of the complaints and demands, and directed him to answer thereto, and leave the empire of Japan within three months from the date of his letter, (July 7, 1871;) or, otherwise, advising him that if he remained in Japan after that time he would not be accorded any protection by the American authorities in the country.

This communication I replied to on yesterday, in part affirming Mr. Mangum's proceeding, and pointing out to him a proper course of practice to govern his action in similar cases in the future, (inclosure No. 5.)

I trust that in my instructions to him I have announced such rules as will meet with your kind approval.

I am, &c.,

C. E. DE LONG.

[Inclosures.]

No. 1. Note from W. P. Mangum to C. E. De Long.

No. 2. Note from governor of Nagasaki to W. P. Mangum, esq.

No. 3. Complaint of Japanese woman and village master against Mr. Lake.

No. 4. Letter of Mangum to Lake, advising him of these complaints and demands, and directing him to leave Japan.

No. 5. Note of instructions from C. E. De Long to Willie P. Mangum, esq.

[Inclosure No. 1.]

*Mr. Mangum to Mr. De Long.*CONSULATE OF THE UNITED STATES,
Nagasaki, July 8, 1871.

SIR: I have the honor to inform you that I have received a letter from his excellency the governor of Nagasaki, forwarding to me a complaint against G. W. Lake, made by a Japanese woman, residing at Nagasaki, named Toka, requesting me to have the matter investigated and justice done in the premises; and that his excellency, in forwarding this complaint, refers to the past career of said G. W. Lake at Nagasaki, and, calling attention to the

fact that, under the seventh article of the treaty, he has forfeited his right of residence in Japan, requests that this provision of the treaty be enforced against him.

I inclose a copy of the petition of said Toka, which fully explains her case, marked inclosure A, and a copy of the governor's letter, marked inclosure B.

I have notified the said G. W. Lake of the complaint, and to appear at an early day at Nagasaki, in order that the matter may be investigated; but as he is at present at Yokohama, out of my jurisdiction, so that I cannot serve a summons on him in the usual form, I will thank you to take such other steps as you may deem proper and requisite to compel his appearance. And in compliance with the requisition of the governor, I have also informed him that he has forfeited his right to go more than one Japanese ri inland from his place of residence, which is at Nagasaki, and his right to reside in Japan, and that he must leave the country, allowing him three months from the date of my letter to him, July 7, 1871, to settle his affairs.

I inclose a copy of my letter to the said G. W. Lake, marked inclosure C, and beg that you will issue the necessary instructions to have the aforesaid article of the treaty enforced at the other open ports in this case.

I have, &c.,

WILLIE P. MANGUM.

[Inclosure No. 2.]

NAGASAKI 19th 5th Month, 4th year Meiji.

SIR: Herewith inclosed I beg to forward to you two petitions, with the translation, in which a woman, named Toka, (who was the prostitute under the employ of Matsumuraya Izumejiro, in this town, and known formerly by the name of Takashino,) complains of the action of Mr. G. W. Lake, by whom she was kept eleven years, as if she was his wife, and by whom she has one living child. His action appears to be most cruel and odious, and this concerns to the vicissitudes of said Toka and her child, which I cannot lay aside. I therefore beg to request you to have investigated the matter at once, and inform me the result.

Mr. G. W. Lake often behaved violently during his stay in this port, and he has several times been ordered before your consular court for his bad conduct, and convicted and punished according to the laws of your country, by being fined and confined in the jail of the foreign office. As he is so wicked, it is unknown what serious consequences may be caused by him in the future which gives trouble to both sides.

I therefore must request you to have sent him back to his country as soon as the complaint of said Toka has been investigated and justice done, for he has lost his right to live in Japan according to the treaty, which says, in the Article VII, that "Americans who have been convicted of felony, or twice convicted of misdemeanors, shall not go more than one Japanese ri inland from the places of their respective residences, and all persons so convicted shall lose their right of permanent residence in Japan, and the Japanese authorities may require them to leave the country." I therefore again request you that this article of the treaty be put in force against Mr. G. W. Lake.

With compliments.

MAYAGAWA TUSAYUKI,
Gen Chiji of Nagasaki.

UNITED STATES CONSULATE,
Nagasaki, July 7, 1871.

The above and foregoing is a true copy of the original translation of the letter of the governor of Nagasaki, on file in this office.

{ UNITED STATES }
{ CONSULAR SEAL. }

WILLIE P. MANGUM,
United States Consul.

[Inclosure No. 3.]

To the United States Consul, Nagasaki:

I, the undersigned, have the honor to present the following petition:

I was employed by Mr. G. W. Lake during the eleven years up to the present year, since I was first engaged into his service, when, in the year 1860, he had been discharged from his duty as the door-keeper of "Ewanaga," (Bungalow of Messrs. Wash Hall & Co.) I lived with him together in the house hired, and took the great pains, in order to spend our days, trying to prevent from the leaking of rain through the roof of the house by covering blankets under the floor, and, at the same time, he commenced to do his business on the cattle and fowls, and could not hire a cooly for supplying grass to the cattle, not having had a single

"cash," so I crossed myself daily over to Juasa to take the grass for cattle's feed up to them, and made his continuance, on such business, by my discharging the works of man or maid servants during the past six or seven years; he become so rich from time to time as he is at present.

When I spent the days hardly with Mr. G. W. Lake, my parents and sisters came and told me, many times, that it is better for me to separate from him, because my long servitude to the man, whose business consists of butchery, should not bring me to a happy future, but thinking that it was not right to do so I was joining to Mr. G. W. Lake, concealing myself from the eyes of others.

I was waiting that Mr. G. W. Lake, who proceeded to Yokohama on his business in the year 1869, would return to this port in some days, but he who left them directly for his native country and did not communicate with me for about two years, in the affecting manner he has arrived at his house in Oura this time.

During his absence from this port, his brother and Jim, a clerk, residing at his house, were very unkind to me, and gave nothing in order to support myself and child, too, so I was obliged, for two years, to pass my days in the houses of my friends, in the same street of this town, and sisters for every half-month, and then in the house of some foreigners, or in selling my clothes and in borrowing some money from any others, for which I was very much distressed during these two years.

Mr. G. W. Lake told me that he intended, this time, to send for his wife he married with at his native country, of which I was learned of already, and that he will separate from me, for my living with him, makes his wife disagreeable on her arrival to this port, which I thought to be just for him and complied with such proposals made by him, because the woman's feelings are of the same, generally, in the world. I inquired to him what shall he do with the child, and was told that he would separate from me and the child, when I replied to him, "Where shall I go with the child, for I have no house to live in." He said he will hire the carpenter to remove the next house on the next lot, No. 44, belonging to him, and to build up the same again for me in my street of the town; consequently I was satisfied with such proposals of his separation of me and child.

As he has changed his intentions at present, accusing me falsely, that I had a secret lover during his absence, on account of my having lived in the house of the street of the town, I am very sad daily for such disappointment, so I request you earnestly, you will understand, that when Mr. G. W. Lake formerly left this port for Yokohama and returned to me, he suspected for a secret lover, and beaten me many times. It might be very happy for me many times if I gave the child to any man as an adopted son—this child was born seven years ago—I would not be troubled myself so much as I am now. It is certain that Mr. G. W. Lake did not allow me to do so at the time, and I am keeping the child until he is seven years old.

I cannot conceive that Mr. G. W. Lake, who thought at first the child as his own one, and took a great care in rearing him up by having a wet nurse, &c., tells me now many difficulties, saying that the child is not his own one. Having been proposed by Mr. G. W. Lake an excessive hardness for me, changing suddenly his intention, which seems to me to be the advice of his brother and clerk, named "Jim." I thought often it would be better for me that I lost my life, but I did not so, having thoughts of the child, and I am now in great distress.

Pray you will be kind enough to make an assistance for me and child, that I shall pass my days with child so easily as possible.

Mr. G. W. Lake told me once that if he married with country woman he shall marry me off to some Japanese, but I believe that I cannot immediately marry unto any man, for not only accompanying a child, but I was already twenty-eight years old, instead of being seventeen or eighteen years old.

On his excessive proposal I am very sad and perplexed at present what to do, while I kept myself strictly during his absence, thinking that I have not the right to marry freely with another, not having separated yet from him.

If you will a good advice to Mr. G. W. Lake, after you considered well the above circumstances, that he will give me and child a suitable assistance, I would be very much thankful, and never forget your greatest favor in all my life.

TAKO,
Petitioner.

I hereby certify that the woman named Tako petitions as is mentioned above.

SUDZUKI HANZABRO,
Village Master of Tanachi.

UNITED STATES CONSULATE,
Nagasaki, July 7, 1871.

The above and foregoing is a true copy of the original translation received from the governor of Nagasaki.

[UNITED STATES CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul.

To the United States Consul, Nagasaki :

I, the undersigned, have the honor to state you the following as the additional request :
 Having removed myself to the next empty house No. 44, on the 17th instant, and being presently visited by two or three foreigners, was requested to resume my engagement for them, because Mr. G. W. Lake married some European lady at his country, and to consent to their own request, adding a conversation of Mr. G. W. Lake, with them, that he told them to transfer me any time, if I will satisfy with it, but I declined it soon, saying, with anger, that Mr. G. W. Lake is very wrong, and let them have gone away, of which I believe that Mr. G. W. Lake told them truly so and so.

I beg to express you my extreme surprise, that I was much suppressed with such a wrong of Mr. G. W. Lake, while he cannot complete even my subsistence at all. I, who was seventeen years old when engaged for Mr. G. W. Lake, have been registered as first in the list of "kutzwaya," only by the name, but had not quite a reason that I offered myself to the same tea-house. Two or three Japanese woman have been engaged for Mr. G. W. Lake before I was, but they left from him away because they were vexed of his much promises, so that none of them could engage herself for Mr. G. W. Lake any longer ; so I succeeded to the engagement of the said predecessors for him, while I well understood him to be poor man.

Thereafter Mr. G. W. Lake was dealing the butchery business ; but he made no payment for me to the above tea-house, "kutzwaya," except four boos got from him some time, or eight boos within two months as my pocket-money, with which amount I made the payment for the tea-house. At that time Mr. G. W. Lake promised me, that he being unable to make immediate payment for me, will pay the total amount at future years, and help me and child better by and by, because he had the child afterward, but I think now it is out of the way, that he failed his last word, (meaning that he considered me always just the same as his wife, and will marry not with any other woman in his life, and likewise, that everything would be shared in two parts if we should oblige to separate from each other, because the mutual industry produced his estate to the richness.

The above child whom I am growing up richness still with my great love, is now seven years old, because I believe him to be my true one since his birth ; but Mr. G. W. Lake expressed me his pretext that the above child was made through my lewdly intercourse with some Japanese in town of Nagasaki, instead of his true child, while he was no doubt present when the birth of the child took place, of which I observe it, as if he had been prompted by two men (his brother, and clerk named Jim) to do such evil, or should have changed his mind for account of his having married some lady. Under these circumstances I have been overwhelmed with a deep sorrow, went on the sea-side one or two times for the purpose to commit my suicide by drowning, but this was prevented for the grief of my young child to be left alone from me.

Although I am, of course, a foolish woman, and should not be good for Mr. G. W. Lake, yet I was engaged for him during eleven years about. If he persists upon such a pretext, how we can keep our livelihood, and are very hard to do so though, I being overage, can be allowed to marry with anybody.

I am very angry against his bad conduct, and believe that there is no difference of the humanity between foreigners and Japanese, so it is of my hope that I am at home only with my child expecting his full growth.

If you will put my suspicions upon my declaration, I can prove it with my cutting hair ; so I beg to request you will be good enough to understand my excessive sorrow, and call Mr. G. W. Lake into your office to explain to him well the contents of my petition.

I beg to add it was some years ago that Mr. G. W. Lake went to his country, and came not again to Nagasaki for a long time, when I obliged to be engaged for some foreigners more than one year, because I alone, who have been left in Nagasaki by him, and could not eat nor drink. Meanwhile Mr. G. W. Lake came back to Nagasaki and wounded the said foreigner at his great dispute with each other, and this case was laid before Her Britannic Majesty's consul and settled, and I was then in the right to be engaged for the above-wounded foreigner, and requested to Mr. G. W. Lake that I may discharge my engagement for, but he declined it ; and after this he told to my parents at Simabara, that they may deposit me and child their home during his absence, and pay them truly for the supporting-money.

Therefore I beg to repeat my request that you will take a favorable assistance, so that I and child may keep subsistence to the last of our days.

2d month, 4th year Meiji.

TAKO, *Petitioner.*

I hereby certify that the woman named Tako petitions as it mentions above.

SUDZUKI HANZABRO,
Village Master of Tanachi.

UNITED STATES CONSULATE,
 Nagasaki, July 7, 1871.

The above and foregoing is a true copy of the original translation received from the governor of Nagasaki.

[UNITED STATES CONSULAR SEAL.]

WILLIE P. MANGUM,
United States Consul.

[Inclosure No. 4.]

No. 52.]

CONSULATE OF THE UNITED STATES,
Nagasaki, July 7, 1871.

SIR: I received yesterday from his excellency the governor of Nagasaki a letter requesting me to investigate a complaint, which he inclosed, made against you by a Japanese woman named Tako, who asserts that she lived with you at Nagasaki for several years as your wife, and has one child now living, of which you are the father; that she labored to assist you in making a living when you were without means, and was instrumental in your success, as she expressed in her petition: "The mutual industry produced his estate to the richness." She also asserts that you have also cast off both herself and child, without adequate means of support, and appeals to the authorities to have justice done to them.

I hereby notify you to appear at Nagasaki at an early day, so that this matter may be investigated. In his letter, the governor refers to your past career in Nagasaki, and, calling attention to the fact that under the 7th article of the treaty you have forfeited your right of permanent residence in Japan, requests that the provision of the treaty be enforced against you. Article VII: Americans who may have been convicted of felony, or twice convicted of misdemeanors, shall not go more than one Japanese ri inland from the place of their respective residence, and all persons so convicted shall lose their right of permanent residence in Japan, and the Japanese authorities require them to leave the country.

Under this clause of the treaty you have clearly forfeited your right to go more than one Japanese ri inland from your place of residence, the same being at Nagasaki, and your right of permanent residence in Japan, and now the Japanese authorities require that you shall leave the country.

In compliance with the requisition of the Japanese authorities, I hereby notify you of this forfeiture, and inform you that you must leave Japan, allowing you three months' time from this date, July 7, 1871, to settle your affairs. If, at the expiration of this allotted period, you shall still remain in the empire, you will not be accorded any protection by the American authorities in the country.

I am, sir, very respectfully,

WILLIE P. MANGUM,
United States Consul.

GEO. W. LAKE, Esq.

[Inclosure No. 5.]

Mr. De Long to Mr. Mangum.

No. 19.]

UNITED STATES LEGATION,
Yokohama, Japan, July 16, 1871.

SIR: I have the honor to acknowledge the receipt of your dispatch, No. 53, of the 8th instant, with its inclosures.

The measures taken by you in regard to Mr. G. W. Lake, in notifying him to leave the country, or that he would, at the expiration of three months from the date of your notice, lose the right to claim any protection from United States officers resident here, seems to be in strict accordance with the instructions upon this subject from the State Department.

I would suggest to you the propriety of advising all of your brother consuls in this empire of your order; and also in future cases remit such an order to the United States marshal at the port where such convict is to be found, with directions to make personal service of a copy of the order, and return the original to you with his proceedings indorsed thereon in writing. In this way you will insure timely service of your orders, and have evidence constantly on file in your office, showing when and where the person was served.

In regard to the affair of the Japanese woman's claim against Mr. Lake, I can only say that, if she claims wages as a servant, or support for her child, as being the infant of Mr. Lake, she must, in order to bring Mr. Lake into court, commence action by filing complaints in writing, sworn to, setting forth her cause of action or complaint, and praying for a judgment for some certain sum of money or other relief. Whereupon it will be your duty to issue a summons, under the seal of your court, directed to the defendant, summoning him to appear in such time as is provided by the consular-court regulations. Attach a copy of the summons to a copy of the complaint; and to the original summons attach an order to the United States marshal, to whom you send it for service, directing him to make service and return of the writ, as by the regulations for consular courts it is provided. Thus you may have a summons from your court served at any port in the empire; and in this way only can a defendant be brought into court in a civil action.

Consequently I cannot comply with your request by taking any steps to compel Mr. Lake to respond to the application on behalf of the woman forwarded to you by the governor.

I have, &c.,

C. E. DE LONG.
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Mr. De Long to Mr. Fish.

No. 80.] LÉGATION OF THE UNITED STATES IN JAPAN,
Yokohama, August 21, 1870.

SIR: I have the honor to transmit herewith original complaints received by me from Mr. G. W. Lake, of Topsfield, Mass., against Mr. Mangum, our consul at Nagasaki, and Mr. D. L. Moore, formerly acting vice-consul at that port.

I inclose letter of acknowledgment to Mr. Lake.

I have, &c.,

C. E. DE LONG.

[SEAL.] GEORGE WILKINS LAKE
 versus
WILLIE P. MANGUM, U. S. CONSUL, NAGASAKI, JAPAN. }

To Charles De Long, United States Minister, Kanagawa, Japan :

The plaintiff, Geo. W. Lake, represents that the defendant, Willie P. Mangum, consul for the United States of America, did, on the 15th day of April, 1869, stay an arbitration case between G. W. Lake and R. J. McCaslin by a written order to Mr. John Maltby, who was acting as umpire, without notifying either party signing that he intended doing so, thereby conniving with plaintiff's enemies, who brought suit against plaintiff to make plaintiff deliver over a certain flour-mill in dispute, thereby subjecting plaintiff to damages amounting to \$619.55. Besides, defendant did, on the 14th day of May, 1869, refuse plaintiff the right of appeal, and on the 13th of May, 1869, refused to receive into court the key of the property in dispute, and did throw plaintiff into prison on the 13th of May, 1869, for not delivering over the property to Adrian & Co.'s clerk, and refused to allow plaintiff to speak in his defense. Also defendant threw plaintiff into prison a second time for the same offense on the 15th day of May, 1869. Defendant also deprived plaintiff of the key of his property under a search-warrant while in prison, May 15, 1869. Also, defendant did compel plaintiff's agent, by threats and abuse, to settle the amount awarded by arbitration, and sacrifice \$400. Plaintiff petitions the court to compel the defendant to pay and make good these sums mentioned, and to pay the sum of \$5,000 damages, which plaintiff claims he has sustained by the unlawful proceedings of the United States consul at Nagasaki, Japan, by being disgraced by imprisonment in a Japanese prison, and injured by the imprisonment and transportation of Capt. E. Tolman, of schooner *Spray*, owned by plaintiff, from Nagasaki, Japan. Plaintiff petitions the court to award any further damages the court may deem just.

Topsfield, Mass., May 3, 1870.

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,
Essex, ss, May 3, 1870.

Subscribed and sworn to before me,

JOSEPH W. BATCHELDER,
Justice of the Peace.

[Revenue stamp.]

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, May 18, 1870.

I hereby certify that at the date of the attestation hereto annexed, Joseph W. Batchelder was a justice of the peace for the county of Essex, in the said Commonwealth, duly commissioned and constituted, and that to his acts and attestations as such, full faith and credit are and ought to be given, in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

[SEAL.]

OLIVER WARNER,
Secretary of the Commonwealth.

GEORGE WILKINS LAKE
 versus
D. L. MOORE, U. S. VICE-CONSUL. } Action for damages.

To the Hon. Charles De Long, U. S. Minister at Kanagawa, Japan :

The plaintiff, G. W. Lake, respectfully represents that the defendant D. L. Moore, vice-consul at Nagasaki, Japan, did, on the 26th day of November, 1867, deprive plaintiff of his liberty by issuing an order under the seal of the United States to D. H. Tilson, dated Novem-

ber 26, 1867, on which plaintiff was imprisoned in a Japanese prison for a term of ten days, thereby subjecting plaintiff to heavy damages by loss of credit with the Japanese, and disgrace. Also, defendant did deny plaintiff the right of an appeal, and also did refuse to accept \$5,000 bonds until the United States minister could be communicated with, on the day the sentence was passed, in and before the court, thereby compelling plaintiff, in order to obtain justice, to defy his power and proceed in person to the United States minister. No redress could be obtained, because no papers came lawfully certified to through the United States consul, which could not be done, as defendant would not allow either time of opportunity. Defendant did, on the 26th day of November, 1867, refuse to receive into court a written document protesting against his proceedings, and did defiantly throw it back to plaintiff. It was again presented to the United States marshal for presentation to the United States consul, after having been certified to by three witnesses.

Plaintiff petitions the court to compel defendant to make good the damages caused by defendant, to the amount of \$6,000, and render plaintiff what further compensation the court may deem just.

Topsfield, Mass., May 11, 1870.

Very respectfully,

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,

Essex, ss :

On this 12th day of May, A. D. 1870, George W. Lake makes oath to the truth of the foregoing statement by him inscribed.

Before me,

CHARLES KIMBALL,
Justice of the Peace,

[Rev. stamp.]

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, May 18, 1870.

I hereby certify that at the date of the attestation hereto annexed, Charles Kimball was a justice of the peace for the county of Essex, in the said Commonwealth, duly commissioned and constituted; and that to his acts and attestations, as such, full faith and credit are and ought to be given, in and out of court.

In testimony of which, I have hereunto affixed the seal of the Commonwealth, the date first above written.

[SEAL.]

OLIVER WARNER,
Secretary of the Commonwealth.

NAGASAKI, November 26, 1867.

DEAR SIR: I, the undersigned, do hereby by this presents solemnly protest against the unlawful proceedings that you have taken to injure me under the name of the law. First. About the 1st July, I applied to you for redress, or some satisfaction or understanding regarding the continual interference of the Japanese in stopping the sundry articles required for shipping, such as bread, &c. Your answer to me, that you could not help me, nor do anything for me, and further you stated that the Japanese had, that morning, me up and complained that I had struck and detained in my house a Japanese officer while in the lawful performance of his duty. You also said that they did not wish to enter a suit against me, and you said that you would write a letter to the governor and apologize. I explained to you the whole difficulty that had taken place the night previous, and that I had no witnesses to prove what I had said, or there was no one around at the time but the Japanese boatman, and he ran away and I have not seen him since. As I explained to you, he drew his sword on me or the boatman, and I immediately took it away from him and brought it into the house. He followed me to get it back. I put the sword away in a drawer and requested him to stop in my office until I came back from the custom-house, as he would not accompany me. On my return from the custom-house, I found him standing in the middle of my office. I deliberately took hold of him by the arm and handed him back his sword, and took him before the superintendent of customs. I had to force him to go, as he would not go, and wanted to run away. As to his statement that I shut the door and locked it, it is false. Even if I did, he could have walked out of the window, as there was two windows broken and the sash also. If you had taken the trouble to ascertain these particulars, which was your duty as consul—besides there was no witnesses against me but what was in my favor, and the man's own statement that I did not strike him nor kick him.

How in the name of God can you make out that I deserved ten days' imprisonment and a fine of \$25? The whole affair, from beginning to end, shows that it was through spite and malice on your part, just to injure me. I, therefore, here, by this presents, notify you that if you deprive me of my liberty at this present moment, as my brother is sick and not able to attend to his and my business, I shall hold you responsible for damages to the amount of \$6,000, as the full amount provided by law, for every day that

I am deprived of my liberty ; I being well convinced that you have received in the consulate record what is not true, as I have good and substantial witnesses to prove that you were biased by your friend Robinet, and can bring proof that you have stated before witnesses in the Bellevue Hotel that all you wanted was to get a pretense and you would put Lake through.

From yours truly and respectfully,

GEO. W. LAKE.

D. L. MOORE,
United States Vice-Consul.

This is to certify that we are witnesses to the fact of this paper being given to D. H. Tilson, United States marshal, for presentation to D. L. Moore, esq., United States vice-consul.

A. C. WATTS.
Z. L. TANNER.
WM. J. OLIPHANT.

UNITED STATES CONSULATE,
Kanagawa, Japan, September 16, 1869.

Personally appeared before me George W. Lake and acknowledged the signature to the above letter to be his own, and swore that said document was in every respect true.

{ UNITED STATES CONSULATE SEAL, }
{ KANAGAWA. }

LEMUEL LYON,
United States Consul.

UNITED STATES CONSULATE COURT,
Nagasaki, November 26, 1867.

To D. H. Tilson, *United States marshal :*

You are hereby commanded to commit the prisoner, G. W. Lake, to the Japanese jail, to be there held until further instructed by this court ; and of this order make due return.

{ CONSULATE SEAL, }
{ NAGASAKI, JAPAN. }

D. L. MOORE,
United States Vice-Consul.

George W. Lake.

COMMONWEALTH OF MASSACHUSETTS, *Essex, ss :*

On this 12th day of May, A. D. 1870, George W. Lake makes oath to the truth of the foregoing statement by him inscribed. Before me,

CHARLES KIMBALL,
Justice of the Peace.

[Rev. stamp.]

Mr. De Long to Mr. Lake.

UNITED STATES LEGATION,
Yokohama, August 8, 1870.

SIR : I received your complaint against Mr. Mangum, the United States consul at Nagasaki, and Mr. D. L. Moore, late vice-consul at that port, and I now beg to inform you that those documents have been sent you to the Department of State by this opportunity.

I am, &c.,

C. E. DE LONG.

Mr. Lake to Mr. Butler.

TOPSFIELD, MASS., *September 17, 1870.*

SIR : I hereby acknowledge the receipt of W. P. Mangum's letter dated July 7, 1870 ; also one from the Department of State, with your indorsement.

W. P. Mangum's letter is the most perfidious statement that could possibly be imagined, the principal fact of which is false.

To prove that my statements heretofore stated to you and to the Department of State are true, I hereby request an interview with you, to be questioned and examined in the most thorough manner. Then, if it

is shown that I am the villainous character represented by W. P. Mangum, you are at liberty to denounce me as such.

Will you please demand for me, in my name, a copy of the consular record at Nagasaki, Japan, in all cases that have been brought against myself and brother, Edward Lake, especially the one in June 16, 1863, charge of an assault and battery; August 31, 1865, charged with an assault; September 28, 1866, charged against G. W. Lake and Edward Lake; June 10, 1867, charged of unlawfully detaining and wounding a Japanese officer. Also a copy of the contract for the delivery of the flour-mill to Adrian & Co., that A. P. Mangum speaks of, which most assuredly cannot be produced, as there never was any contract, either verbal or in writing.

I take the liberty to inform you that Capt. E. Talman, late of the schooner *Spray*, is now in San Francisco, Cal., in the marine hospital. He stated that his sickness was caused by his long imprisonment, and neglect while imprisoned in Japan, and has not been able to do a day's work on board of the ship on the passage to San Francisco, as he was sick all the passage.

From, very respectfully,

G. W. LAKE.

Hon. B. F. BUTLER.

Mr. Davis to Mr. Lake.

DEPARTMENT OF STATE,
Washington, April 13, 1870.

SIR: I acknowledge the receipt of a paper transmitted by you under the caption—

GEORGE WILKINS LAKE	}	Action for damages.
<i>versus</i>		
WILLIE P. MANGUM.		

Referring you to the letter from this Department under date of January 7, 1870, I have further to state that this Department possesses no judicial authority to entertain an action at law, or to award damages against a consular officer. Your remedy, if any exists, must be sought in the proper court of law.

I am, sir, your obedient servant,

J. C. B. DAVIS,
Assistant Secretary.

GEORGE WILKINS LAKE, Esq.,
Topsfield, Mass.

Mr. Lake to Department of State.

GEORGE WILKINS LAKE	}	Action for damages.
<i>versus</i>		
WILLIE P. MANGUM.		

To the Department of State, U. S. A., at Washington, D. C.:

The plaintiff, G. W. Lake, represents that the defendant, W. P. Mangum, consul for the United States of America, did, on the 15th day of April, 1869, stay an arbitration case between G. W. Lake and R. J.

McCaslin by a written order to Mr. John Maltby, who was acting as umpire, without notifying either party signing that he intended doing so, thereby conniving with plaintiff's enemies, who brought suit against plaintiff to make plaintiff deliver over a certain flour-mill in dispute, thereby subjecting plaintiff to damages and fines amounting to \$619.55; besides, defendant did, on the 12th day of May, 1860, refuse plaintiff the right of an appeal; and, on the 13th of May, 1869, refused to receive into court the key of the property in dispute, and did throw plaintiff into prison on the 13th of May, 1869, for not delivering over the property to Adrian & Co.'s clerk, and refused to allow plaintiff to speak in his defense; also, defendant threw plaintiff into prison a second time for the same offense. On the 15th day of May, 1869, defendant also deprived plaintiff of the key of his property under a search-warrant, while in prison, May 15, 1869; also defendant is depriving plaintiff of \$1,264.22½, awarded to him by the arbitration decision of J. W. Smith and Johannes Bruinier.

Plaintiff petitions the court to compel defendant to pay and make good these sums mentioned, and to pay the sum of \$5,000 damages, which plaintiff claims he has sustained by the unlawful proceedings of the United States consul at Nagasaki, Japan, being disgraced by being thrown into a Japanese prison, and injured by the transportation of Capt. E. Talman of schooner *Spray* (owned by myself) from Nagasaki.

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,

Essex, ss, April 4, 1870 :

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,

Justice Peace.

GEORGE WILKINS LAKE }
versus } Action for damages.
 WILLIE P. MANGUM. }

To the Department of State, U S. A., at Washington, D. C.:

THE PLAINTIFF'S STATEMENT.

Nearly three years ago plaintiff received the machinery of a steam flour-mill, under a written agreement with R. J. McCaslin, he owning one-third; H. Holcomb and Captain Semmons owned the other two-thirds. I received said machinery in a damaged condition, of the value of about \$1,200, and erected the same on my ship-building yard A, at Nagasaki. There being no sale for it, it proved a bad speculation. I requested A. S. Fobes to take delivery of it, and pay me what I had expended, he, A. S. Fobes, claiming that he had a power of attorney to sell said mill from R. J. McCaslin, this being in direct opposition to the agreement with R. J. McCaslin. I advertised the mill to be sold at public auction, and notified H. Fogg & Co., of Shanghai, that I intended to sell said mill, but did not do so, as I had received a letter from W. P. Mangum, United States consul, No. 146 :

UNITED STATES CONSULATE,
Nagasaki, November 21, 1868.

SIR: I am informed by Mr. Fobes, representing the parties who own in the mill located on your premises, that you have notified him that it is your intention to sell the mill on the 30th instant. You are hereby ordered to desist selling or removing any part of said mill until the owners or parties connected can be communicated with, and a proper understanding be arrived at in respect to the same.

Very respectfully, yours,

WILLIE P. MANGUM,
United States Consul.

G. W. LAKE.

On receipt of the above letter, I sent my account to the United States consul, requesting that he would collect it. He paid no attention to my request. R. J. McCaslin arrived in Nagasaki; he went and sold said mill to Adrian & Co. for the sum of \$5,500, without consulting with me at all, but wrote me stating that he had sold the mill to Adrian & Co., which letter I refused to accept, as he did not want to allow me but \$4,000, and that was to be settled by the decision of United States consul. On the 7th of April, 1869, I met McCaslin in the consulate, by the advice of W. P. Mangum. I agreed to leave my claim to arbitration. R. J. McCaslin agreed to it. It was drawn up, as follows:

NAGASAKI, JAPAN, April 7, 1869.

G. W. LAKE }
versus } In matter of dispute on account of flour-mill.
R. J. McCASLIN. }

We, the undersigned parties, do mutually agree to submit to the arbitration and decision thereof to Capt. J. W. Smith, on the part of G. W. Lake, and Johannes Bruinner, esq., on the part of R. J. McCaslin, with power to said J. W. Smith and Johannes Bruinner to select an umpire, and we further agree to submit to the award of said arbitration, or a majority of them, and consent that said award shall be final.

In testimony whereof we, the said G. W. Lake and R. J. McCaslin, hereunto subscribe our names.

(Day and date above given.)

G. W. LAKE.
R. J. McCASLIN.

Signed in presence of—
WILLIE P. MANGUM,
United States Consul.

The above submission being signed, I withdrew my accounts from the consulate.

On the same day R. J. McCaslin wrote me a letter, as follows:

NAGASAKI, JAPAN, April 7, 1869.

DEAR SIR: I have this day sold the flour-mill, situated on your lot in Komenohera, for the sum of \$5,500. Messrs. Adrian & Co. will hold the whole amount of said sale-money on account of what may be due on account of said mill, the matter which we have this day agreed to submit to arbitration.

R. J. McCASLIN.

G. W. LAKE, Esq.

Seen and agreed upon.

ADRIAN & CO.

The next day Adrian & Co.'s clerk came to me with a note from R. J. McCaslin and requested the key, which read as follows:

DEAR LAKE.—SIR: Please let Adrian & Co. have the key to the flour-mill at any time when they wish to see it.

R. J. McCASLIN.

NAGASAKI, April 7, 1869.

I delivered the key and took a receipt for it, with the understanding that no part of the mill should be removed until the first decision of the arbitration. Adrian & Co. immediately commenced pulling down the mill. I went to the consul, and requested that the work might be stopped. The consul sent a marshal with me and locked the mill up, I taking the key. On the 15th I wrote to Adrian & Co. a letter, as the arbitrators had informed me they would give their decision in two days, it then being in Mr. John Maltby's hands, he acting as umpire :

NAGASAKI, *April 15, 1869.*

DEAR SIR : I take the liberty to inform you, in answer to R. J. McCaslin's letter dated April 7, and seen and agreed upon by you, that I do not sanction the sale of the flour-mill so far as I am concerned, and that I decline to allow the mill's being removed until the arbitrators give their decision, but as you have given me your word of honor that you will pay me the amount due me for erecting said mill, you may take said mill down and remove it, but I shall expect you to pay me the full amount as soon as the arbitrators give their decision.

From yours, respectfully,

G. W. LAKE.

Messrs. ADRIAN & Co.

After writing the above letter I went and unlocked the mill to let the men go to work removing the machinery to get ready to ship, knowing that Messrs. Adrian & Co. had a brig lying waiting for the machinery, as he said, and knowing that it would take a number of days to take it asunder to get it ready for shipment, and not thinking that the United States consul would meddle with the arbitrators and stay the proceedings, as he did by writing the following letter to Mr. John Maltby :

UNITED STATES CONSULATE,
Nagasaki, *April 15, 1869.*

SIR : The arbitrators in the case of G. W. Lake *vs.* R. J. McCaslin, on account of your being unable to come to a satisfactory agreement, and having selected you as umpire to decide the case, I have to inform you that Messrs. H. Fogg & Co., of Shanghai, have declared to me that they have an interest in this mill ; also it is necessary that you hold giving any award until you receive further instructions from me on the subject.

Very respectfully, your obedient servant,

WILLIE P. MANGUM,
United States Consul.

JOHN MALTBY.

This letter having been received by Mr. Maltby, he refused to proceed with the case, and gave an answer as follows :

NAGASAKI, *April 15, 1869.*

SIR : In reference to your case, I would state that I am not in a position to give an award at present, the proceedings having been stopped *pro tem.* by the United States consul as per undementioned, and copy of letter.

I remain, sir, yours, faithfully,

JOHN MALTBY.

G. W. LAKE, Esq., *Nagasaki.*

On the same date I received a letter from Adrian & Co., in answer to the one I wrote to him in the morning on the same date when H. Schiff agreed to pay to me what was due me as soon as the arbitrators gave their decision, and, besides, H. Schiff, after acknowledging that he had bought said mill for \$5,500, he says in his letter that he has sold said mill for R. J. McCaslin, subjected to a commission of five per cent., thus lying. I again became afraid that all was not right.

NAGASAKI, *April 15, 1869.*

DEAR SIR : With regard to the sale of the flour-mill which we sold to the Japanese by order of Capt. R. J. McCaslin, for a sum of \$5,500, less our commissions of five per cent., we repeat to-day, what we already told you verbally, that we shall keep this money till the ar-

bitration between you and R. J. McCaslin now pending is decided, and shall pay you in accordance with the wishes of the United States consul the amount decided upon by the arbitrators, not exceeding the above-mentioned sum.

Your obedient servant,

ADRIAN & CO.

To Messrs. G. W. LAKE & Co., *Present.*

Here in this letter Messrs. Adrian & Co. state contrary to what they told me verbally; they agreed to pay me as soon as the arbitrators gave their decision, in a verbal conversation. In their letter they state that they shall pay in accordance with the United States consul's wishes, and also state that they have sold the mill to the Japanese, subjected to a commission of 5 per cent., thus falsifying their statements previous, and by their previous acknowledgment of R. J. McCaslin's letter, also making R. J. McCaslin out a liar in his letter, dated September 7, 1869, in which he says that he has sold the mill to Adrian & Co. for \$5,500, thus falsifying their statements. I concluded to stop their work at the mill, and wrote the following letter to W. P. Mangum, United States consul :

NAGASAKI, *April 16, 1869.*

SIR : Hearing that the arbitration proceedings in reference to the claim I have against R. J. McCaslin and the flour-mill has been stopped, pending an inquiry into a claim advanced by H. Fogg & Co., I shall feel obliged by your attaching the flour-mill now erected on my ship-building yard A, at Namonhara, until my accounts against the same are satisfactorily settled.

From yours, respectfully,

G. W. LAKE.

W. P. MANGUM, Esq.,
United States Consul.

The above letter the United States consul did not pay any attention to, not even acknowledging the receipt, but on the following day wrote me the following letter :

[No. 17.]

UNITED STATES CONSULATE,
Nagasaki, April 17, 1869.

SIR : I am informed by Messrs. Adrian & Co. that you have stopped the work at the flour-mill, and taken away the key. This is in direct opposition to the agreement you have entered into with them and Captain McCaslin, and is an illegal act. You are hereby ordered to return the key and allow the work to be resumed. If you persist in your unlawful course, you will subject yourself to a suit for damages.

Very respectfully,

WILLIE P. MANGUM,
United States Consul.

G. W. LAKE, *Nagasaki.*

This letter I paid no attention to, as I did not consider the consul had any business to write any such orders, as I had never delivered up the key, but on a receipt which was returned when I received the key previously, when the marshal locked the mill up. I opened the building afterward to allow the men to work, but did not deliver the key up to Adrian & Co.

H. SCHIFF REPRESENTING ADRIAN & Co.,
versus
GEORGE W. LAKE. } Action for damages.

To the United States Consular Court at Nagasaki :

The plaintiff, H. Schiff, representing Messrs. Adrian & Co., represents that the defendant, George W. Lake, a citizen of the United States, did, on the 17th of April, refuse to comply with his agreement to allow plaintiff to remove a flour-mill situated on defendant's premises,

thereby subjecting plaintiff to the damage of \$40 per day, as lay-days of the brig Mogi, employed to carry said mill from Nagasaki to Osaka, to be delivered to the parties to whom plaintiff had sold said mill, and petitions the court to compel defendant to make good this damage up to the present time, to carry out in good faith his agreement, and render plaintiff what further compensation the court may deem just.

Nagasaki, April 26, 1869.

H. SCHIFF,
Representing Messrs. Adrian & Co.

UNITED STATES CONSULAR COURT,
Nagasaki, April 26, 1869.

Signed and sworn to before me.

WILLIE P. MANGUM,
United States Consul, acting judicially.

I appeared at the United States consulate, as per summons, at 10 o'clock a. m., and handed in my written statement. United States consul rejected it on the grounds that it was not in proper order. The court was to sit at 11 a. m. the 30th of April, 1869. There was no court. H. Schiff did not appear to represent his case; the court-room door was kept locked.

No. 24.]

UNITED STATES CONSULAR COURT,
Nagasaki, May 7, 1869.

SIR: It has been a week to-day since an extension of time was granted you to give in your answer in the flour-mill case, although you were warned at the time to make no unnecessary delay. More than ample time has been allowed you, and I have to inform you that, if you do not appear by eleven o'clock a. m., to-morrow, the 8th instant, to give in your answer under oath, I shall proceed to give judgment against you by default.

Very respectfully,

WILLIE P. MANGUM,
United States Consul.

GEORGE W. LAKE, Esq.

The reason of the United States consul writing such an absurd letter is a mystery to me, as he says that I was warned and an extension of time was granted me to hand in my written statement. I had my statement written out and did present it to him April 30, 1869, at 10 o'clock a. m. He refused to accept it. I was at the consulate standing outside the door up to a quarter to 12 m. The same statement remains in the consulate handed in previous, on the 8th instant. The same case came off the 12th day of April. When I presented it to the United States consul, he asked me if it was the same statement that was handed to him before. I said it was. He says, "Sign your name." I did. As soon as I had signed my name he ordered me to leave his office, which I did. In answer to the United States consul's letter, dated May 7, 1869, I wrote the following, which I sent to the United States consul by Edward Lake; he brought it back, saying the consul called it insulting and would not receive it, (the letter:)

TO THE UNITED STATES CONSULATE COURT.

NAGASAKI, May 7, 1869.

SIR: In answer to your letter of this date, No. 24, I beg to inform the court that I did appear at the United States consulate court at 11 o'clock a. m., as per summons dated April 26, and found the court-room door locked, and it continued locked up to the time I left to go home at 11 o'clock 45 minutes a. m. Plaintiff did not appear at the consulate. I was prepared to hand in my statement under oath, but as there was no court on the 30th of April at 11 a. m., I consider the plaintiff is the defaulter. I am prepared, and always have been, to deliver up the flour-mill, now in dispute, on the receipt of the amount due me for erecting said mill and rent due, but as the money, as per the lowest arbitrator decision and even good se-

curity, satisfactory to myself, is still refused, I will not deliver over my lien until I am satisfactorily secured against loss and all liabilities to hereafter litigation.

From yours, respectfully,

G. W. LAKE

W. P. MANGUM, Esq.,
United States Consul.

The above letter, after being returned by Edward Lake, I carried to the United States consulate myself, and handed it to L. M. Dent, United States marshal. He handed it to W. P. Mangum, United States consul. The consul asked, "Is that the letter that was brought before?" I answered yes. The consul said he would not receive it. It was handed back to me. The consul then invited me into his private office; as soon as I entered, he, the consul, said, "Leave my office;" which I did immediately. I laid it on the table and left the consulate. There was a gentleman with me as witness—the master of the ship *Crysolite*; this gentleman was with me at the consulate on the 8th of May, 1869, the day on which I handed in my statement according to the consul's letter, dated the 7th of May, 1869, and J. W. Smith. After I had been in the consul's private office, and handed my statement to him, and was ordered out after signing my name, the consul, W. P. Mangum, called in Capt. J. W. Smith, and asked him what he came there for with that scoundrel, meaning me, which was said in my hearing. Then the office-door was shut, and as per statement of Capt. J. W. Smith, the consul did shamefully abuse him in harsh and improper language on my account, so much so that Captain Smith refused to go with me to the consulate as a witness again, or on my account. The captain of the ship *Crysolite*, who remained a few moments after we had gone, was kicked out of the consulate and roughly handled by the consul and his bully, down a flight of stone steps, of which I was informed afterward. When he came down to my place of business, marks went to prove the facts of his abuse. On the 12th of May the case came off, (G. W. Lake *versus* H. Schiff,) and as I well knew the case would be decided against me, it being according to all prospects, regarding the consul's determined malicious feelings and actions against me, which he, W. P. Mangum, had repeatedly manifested against me.

Mr. Lyons, paymaster of the United States ship *Idaho*, was one of the assessors. I heard him say to Mr. Mangum that he did not think that he (the consul) had any right to stay the arbitration case. The consul answered by saying that if he had done wrong, then he should be liable, as it had nothing to do with the case, and I must seek redress afterward, which goes to show that the consul knew that he had done wrong, and was determined to carry it out. Previous to the case coming off, after Mr. Tromly, of H. Fogg & Co., had gone to Shanghai, and ample time had elapsed, and all the evidence that he had to bring to bear on the arbitration case had come forward, I sent Capt. J. W. Smith to the United States consulate with a copy of the agreement with R. J. McCaslin, regarding the erection of the flour-mill. The consul received it and read it, and handed it back with the answer that he would allow the case to go on when he got ready. Capt. J. W. Smith also went to Adrian & Co. and offered to give up all claims to the flour-mill for \$4,000. Adrian & Co. refused to pay any money or give any security. Also, when the case came off, H. Schiff was summoned by me as a witness. I asked him to produce the letter dated the 17th of April, 1869, to the court. He declined. I requested the court to demand a copy. The court paid no attention to the request. This letter was very essential to my defense. Well he knew it, and so did the United States consul, as the

United States consul paid Mr. H. Schiff a visit nearly every day after staying the arbitration case. As I had told Adrian & Co. that I knew the case would be decided against me, and that it was my intention to appeal to the United States minister, and the better way for all concerned would be for him to give me security for \$4,000. This they refused. The consul of course knew all my sayings, and was determined that I should not appeal from his decision, so they reduced their claim down (which should have been over one thousand dollars) to \$400; thereby they thought to make the consul's decision final, as per regulations laid down by the United States minister, and are to be found in the China Directory. The case was decided against me on the 12th day of May, 1869. I was fined \$400, and costs of court, amounting to \$84.55. In and before the court I claimed the right of an appeal, and to allow the money to be paid under protest, this being said in court and before a number of witnesses. I deemed it prudent not to force my presence in the consulate, as I had been twice ordered out previously. I concluded to state my case to Captain Williams, of the United States ship Oneida, which I did, and asked his intercession on my behalf to protect me and my property. His answer was that he could not assist me any, only advise with the United States consul; but before Captain Williams went to the consulate, the United States consul had me under arrest by a warrant for the apprehension of my body. Previous to my being arrested, on the morning of the 13th of May, 1869, I sent the key of the storehouse, in which the mill was erected, to the consul by Edward Lake; the consul refused to receive it. Previous to my sending the key to the consulate, Adrian & Co.'s clerk came to me and demanded the key. I refused to deliver it to him, unless I had a written order for it. I also informed him that it was my intention to apply to the United States admiral, then in port, to intercede for me. He, Adrian & Co.'s clerk, went to the consulate and stated to the consul that I would not deliver up the key to him, and also told him a considerable stuff that the consul noted down about my refusing to deliver the key, and of my intentions to apply to the admiral. May 13, 1869, I was brought before the United States consul under a warrant. While before the consul he read over a long statement that Adrian & Co.'s clerk had sworn to, and mentioned from it about my intentions to apply to the United States admiral and about my refusing to deliver up the key according to the decision of the court. I took the key out of my pocket and handed it to the consul, and said that I did not understand that the court ordered me to deliver the key up to Adrian & Co. The United States consul said, "Shut up and stand up, damn you! I am going to punish you, now. I will learn you to disobey an order of this court." He ordered Mr. Dent to put me in irons and take me to jail; the irons were not put on, as I informed Mr. Dent that I would not submit to it. The consul fined me \$50 and costs of court, (\$15.50,) and go to jail twenty-four hours, and if the fine was not paid, to be kept there thirty days. I asked for a piece of paper to write an order on for the money, but was not allowed time or opportunity to write it, but was immediately ordered to jail. The place called prison contains a space of six feet by three, with stench intolerable. The fine was paid, and I was relieved from prison on the 14th of May, 1869. On leaving the prison Adrian's clerk came to me and demanded the delivery of the key. I refused to deliver the key to him unless he had an order for it. This party had lied to me once when I had lent them the key; besides he had no order from the court, and I had requested a copy of the judgment rendered and could not obtain it. I was determined to deliver the key to no one but the

court. On the 15th of May, 1869, I was again brought before the court under a warrant, and fined \$50 and costs, (\$19.50) As I entered the court the consul saluted me with these words, "Now, damn you, I am going to learn you to disobey an order of this court. You have refused to deliver up the key." I said that I never refused to deliver it up to the court, and was ready to deliver it up then to the court. The consul ordered me to shut up, and ordered Dent to put me in irons, but that was not carried out by the marshal. I was shamefully pushed about like a felon to make all disagreeable passions rise that he could, so to get a hold of me that he might vent his and the consul's spite. While in jail, on the 15th of May, 1869, after being locked up, United States consul issued a search-warrant for the key, at sight of which I delivered an order for the key. Immediately after the mill was removed off my land and from my possession. After all this unnecessary persecution was over, W. P. Mangum gave orders for the arbitrators to go on with the case and give their decision, which was given May 27, 1869, of which award \$2,971.57 has been paid, leaving a balance of \$1,264.22½ due me by the decision of J. W. Smith and Johannes Bruinier, arbitraters chosen by R. J. McCaslin and myself. By the decision of the arbitraters I lose about \$600, which I think is partially owing to the interference of the United States consul.

By my advices from Japan, the United States consul is now trying to break up the decision of the arbitraters. Also since I left Japan, being disgraced in the eyes of the Japanese and loss of credit, which \$5,000 is hardly sufficient to cover, the United States consul is not satisfied, but has taken the captain of a vessel called the *Spray*, (owned by myself,) and fined and imprisoned him in a Japanese prison. After his time was out he again arrested him, (Capt. E. Tolman,) and put him on board of an American man-of-war, in irons, and deported him from the country for a simple assault and battery on a Japanese cooly, who smuggled liquors on board the vessel, which got the men drunk, then took the sailors out of the ship besides, causing trouble on board. The United States consul fined the vessel \$60. Herein he has done me heavy damage by depriving me of the master of my vessel, contrary to the laws of the United States.

Is my interest in this port to be absolutely disregarded through the malicious feelings the United States consul has for me, contrary to the acts of Congress?

The United States consul fined and imprisoned me twice, for contempt of court, as he called it.

The acts of Congress say that in no case shall a contempt of court be construed to anything that transpires, or is said or done outside the court; therefore it could not have been a contempt of court that I was fined and imprisoned for. I beg to refer the court to articles 5 and 6, amendment to the Constitution of the United States, wherein it says that no person shall be twice put in jeopardy of life or limb for the same offense.

Have I not been twice put in prison for declining to deliver the key to my property to any one but the court? Have I not been denied the right of an appeal which is provided in sections 9-11 of the act of June 22, 1860, Stat., 74, wherein an appeal lies as a matter of right? But where is the right to come from, if the United States consul is determined that you shall not have the benefit of the act? He has the power, and when it suits his purpose he will and does defy the rights of the law, as you can plainly see by reading this statement over carefully. All documents pertaining to an appeal must, we know, be filed by the

United States consul, and must be certified to. But supposing the consul is determined not to allow an appeal, as in my case, he tells you that there is no appeal, and that he will not allow any, how is it to be had? I am afraid that the man who demands an appeal in some cases, and a great many that come off in consulate courts, would find himself ensconced in prison, as I was, for standing out for my rights, with but a poor chance of redress if he should persist in his claim for an appeal, in a case like mine especially, where it had been predetermined that there should be no appeal. I applied to the United States minister for redress; he told me that he had no jurisdiction in the case, and referred me to the Secretary of State; therefore I am subjected to the persecutions of W. P. Mangum, United States consul, without any visible mode of redress.

The acts of Congress March 2, 1793, section 5, say that no court has power to stay proceedings in any court. The consul has violated this act in the beginning; if he will violate one by staying an arbitration case without any plausible reason, why not any other act? He is determined to do mischief, and has done me a great deal by disregarding the laws of the land, by depriving me of my property, and imprisoning me in a filthy Japanese prison, to my disgrace and loss of credit, contrary to law and justice.

\$400.]

Received from Edward Lake, for G. W. Lake, the sum of four hundred dollars, (Mexican,) amount of damages against said G. W. Lake, in a suit, H. Schiff, representing Messrs. Adrian & Co., vs. G. W. Lake, for refusal to deliver a certain flour-mill, according to agreement.

Nagasaki, May 14th, 1869.

L. M. DENT,
United States Marshal.

\$34.55.]

Received from Edward Lake, for G. W. Lake, the sum of eighty-four dollars (Mexican) and fifty-five cents, being amount of costs of court, in above case of H. Schiff, representing Messrs. Adrian & Co., vs. G. W. Lake.

L. M. DENT,
United States Marshal.

\$65.50.]

Received from Edward Lake, for G. W. Lake, the sum of sixty-five dollars (Mexican) and fifty cents, being amount of fine and costs for contempt of court, in G. W. Lake refusing to obey order of the United States consular court, in a suit of H. Schiff, representing Messrs. Adrian & Co., for damages in refusing to deliver a certain flour-mill.

L. M. DENT,
United States Marshal.

MAY, 1869.

\$69.50.]

Received, Nagasaki, May 15th, 1869, from Edward Lake, for George W. Lake, the sum of sixty-nine dollars and fifty cents, for a second contempt of court, in a suit H. Schiff, for Adrian & Co., vs. G. W. Lake.

L. M. DENT,
United States Marshal.

I was left to my option whether I would pay the \$400 and cost of court, or have my property sold to cover it. The other two fines and costs I could pay or stay in jail thirty days on each, it being the sentence passed; if not paid, the marshal was to keep me in jail. I beg to refer the court back a few years to a case that came off against me while D. L. Moore was acting consul. He brought me before the court on a charge for detaining and maltreating a Japanese officer, who tried to stop the bread from coming or being brought into my house, and with whom I

had some words. The Japanese officer drew his sword. I took it away from him. He followed me into the house, and staid there till I came back from the custom-house. Then I took him to the custom-house, as requested by the superintendent, for which I was brought before the court and fined \$25 and cost, and be imprisoned sixteen days, and pay the doctor's bill. I had no witnesses, and the Japanese had none present at the time. He stated that I did not strike him, and did not kick him. The consul took the case into consideration, stating that there was no evidence against me, but he must pass sentence on me, as Mr. John Walsh had recorded in the records, advising imprisonment if I was brought before the court again. During Walsh's administration I was brought before the court for striking a Japanese with a revolver, who had robbed me the night before of about \$200 worth of goods. I pleaded guilty and demanded the case be referred to the minister. I carried the amount of fine and cost, amounting to about \$250, to the consulate, and offered to pay it under protest. Mr. J. Walsh refused, and it remained to the time that W. P. Mangum arrived to act as consul. W. P. Mangum arrived in Nagasaki as United States consul. He sent for me, and demanded why I did not pay the fine. I said that I was willing if he would receive it under protest. He said that he would not allow it, and that I had better pay, as he would not allow any appeal from that court. I overheard J. Walsh and W. P. Mangum talking regarding my demand for an appeal, when Walsh said, "These fellows who come out here and make a little money may think they are as good as any one." Mangum said, "We will see." Mangum came out, and ordered me to pay the money, which I concluded to do, and drop it. As I found him so determined, I thought it better to lose the money than have any trouble, but was not aware that it went so far as for the consul to indorse on the register, advising imprisonment maliciously, as I found out when D. L. Moore decided the case against me, as before mentioned. He held a spite against me on account of the Anna Kimball case, because I applied to Admiral Bell to assist me. He was heard to state in the Bellone Hotel that all he wanted was to get hold of me; he would fix me. The time came, and an opportunity offered, when he fined me as before mentioned, and sentenced me to ten days' imprisonment. I refused promptly to submit, and demanded an appeal. He refused, and I defied his power. He kept me strictly under the marshal's charge, and would not allow me time to set forth my appeal, but I must be forthwith locked up. I defied his authority and the marshal's to put me in prison without due process of law. It was no use, and to prison I found I must go. I offered \$5,000 security; it was refused, so I defied the marshal to put me in with a revolver, and stepped into a boat and went direct to the United States minister, and received this answer: that I had taken the law into my own hands, and he could do nothing for me. This being the satisfaction I got, I went back to Nagasaki, and drew up a written statement and handed it to D. L. Moore, United States consul. I had it certified to by three witnesses; then sent him a copy by the United States marshal. Then I was locked up in a Japanese prison ten days; the fine was paid by my brother, as the consul was going to sell a piece of my property. Therefore, knowing that redress was rather doubtful, as I had taken the law into my own hands, I concluded not to do anything, nor defy the consul's power, as the dangers of persecution were too evident, preferring to try the law to seek redress afterward.

Therefore I humbly pray that W. P. Mangum may be made to answer,

and be judged according to law, and pay the damage caused by his interference and unjust proceedings.

GEORGE W. LAKE.

COMMONWEALTH OF MASSACHUSETTS,
Essex, ss :

APRIL 4, 1870.

Subscribed and sworn to before me.

JOSEPH W. BATCHELDER,
Justice of the Peace.

COMMONWEALTH OF MASSACHUSETTS,
Essex, ss :

To all people to whom these presents shall come :

I, Asahel Huntington, clerk of the superior court for the county aforesaid, the same being a court of record, do certify that Joseph W. Batchelder, before whom the accompanying affidavits (two in number) were made, was, at the date thereof, a justice of the peace within and for said county, duly authorized and qualified to administer oaths and take acknowledgments, and that his signatures thereto are genuine.

In testimony whereof I hereunto set my hand and the seal of said court at Salem, on this tenth day of April, in the year of our Lord one thousand eight hundred and seventy.

[L. S.]

ASAHEL HUNTINGTON, *Clerk.*

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1875.— Ordered to be printed.

Mr. FERRY, of Michigan, from the Committee on Finance, submitted the following

REPORT :

The Committee on Finance, to whom was referred the petition of Henry Greenbaum, president of the German Savings-Bank of Chicago, Illinois, report as follows :

The petitioner claims that the sum of \$12,745.72 should be refunded to said bank as taxes improperly collected upon the deposits of said bank from August, 1870, to November, 1873, inclusive.

He further claims that the assessment and collection of this amount was erroneous and improper for the following reason, set forth in his affidavit :

That said German Savings-Bank, in all respects, is conducted and organized within the charter of savings-banks described in the act of Congress passed in June, 1874, entitled "An act explanatory of the act of June 30, 1864," and such banks being declared to be exempt from taxation on deposits the same as deposits in savings-institutions having no capital stock.

On December 21, 1874, this claim was rejected by the Commissioner of Internal Revenue, on the ground that the act referred to does not authorize the refunding of such taxes paid prior to its passage. In a communication addressed to the honorable chairman of the Committee on Finance, dated January 30, 1875, the Commissioner of Internal Revenue writes, respecting this claim, as follows :

In response to the request of the committee, I have the honor to add that there is no warrant whatever for the averment in the refunding claim that the assessments in question were erroneous. On the contrary, they were in every respect lawful and proper.

Section 110 of the act of June 30, 1864, as amended, which was in full force during the period above specified, imposed the tax on deposits upon all persons, banks, associations, companies, or corporations engaged in the business of banking, exempting therefrom only such savings-banks, &c., as had no capital stock and did no other business than receiving deposits to be loaned or invested for the sole benefit of the parties making such deposits, without profit or compensation to the association or company, and even as to such savings-banks limited the exemption to such of the deposits as were invested in securities of the United States, and also such deposits as were less than \$500, (the latter exemption having been further extended by the act of June 6, 1872, amending said section 110, to deposits of \$2,000,) made in the name of any one person.

I understand that this German Savings-Bank had a capital stock, and did business, not for the sole benefit of its depositors, but for the special benefit also of its stockholders. Accordingly it was not, during the period in question, entitled to any exemption from the tax on deposits.

The act of June 6-18, 1874, (Statutes of the last session, page 80,) a misunderstanding of which has doubtless given rise to the petition in this case, enlarged the exemption above mentioned, extending it to savings-banks having a capital stock, for the additional security of depositors, &c.; and thenceforth, of course, no taxes on deposits, other

than those applicable to ordinary savings-banks, have been (knowingly) collected from savings-banks of the character described in the act.

The said act of June 18, 1874, however, went further to the extent of providing that no tax should be collected of the banks described in that act on said deposits otherwise than as therein provided. Inasmuch as there was no proviso saving from the effect of this prohibition, the taxes already accrued and due, but not collected, this last-mentioned provision operates as a perpetual injunction against the collection of those accrued taxes.

But nothing in that act made any reference to or in any wise affected the *status* of taxes already lawfully assessed and collected under the laws as they were previously.

It was urged in behalf of this and other similar claims that, although there is nothing in the body of the act which either requires or authorizes the refunding of taxes, paid prior to its passage, it is nevertheless apparent from its title, "An act explanatory of the act of June 30, 1864," that Congress designed it as an explanatory act. To that this Office replies, first, that the title referred to is a misnomer, as nothing in the act itself, from the enacting words onward to the end, assumes to explain or declare the intent or meaning of the act of June 30, 1864, nor is any reference whatever made to that act; second, that it is only when the body of an act is ambiguous that resort can be had to its title for aid in its interpretation, and that the terms used in the body of this act are not at all ambiguous, but clear and explicit; and, third, that no explanatory act was necessary here, because the act of June 30, 1864, had but recently been judicially construed by the United States Supreme Court.

It is understood, moreover, at this Office that at the time when the bill which ripened into the act of June 18, 1874, was under consideration of the congressional committees, a proposition to make it broad enough to cover and refund taxes already paid was rejected.

To have provided for the return of the whole amount of taxes collected from the class of banks described from the time of the first enactment of the tax on deposits of banks until the passage of the act of June 18, 1874, would have involved the refunding of perhaps hundreds of thousands of dollars—in the present case alone, for a small part of the period, nearly thirteen thousand dollars—and it was not done, nor intended to be done, by the act in question.

Whether that shall now be done is, in effect, the question involved in the consideration of the present petition of the German Savings-Bank. That petition is for the refunding of the taxes paid prior to the passage of the act of last June. If the bank is entitled under that act to the refunding asked for, it can recover by suit, and does not need to trouble Congress on the subject. But if, as is the obvious fact, the bank is not entitled under the act of June 18, 1874, then its petition is, in effect, that the exemptions of that act be extended, but only for its own especial benefit.

Your committee, therefore, are adverse to the prayer of petitioner, and ask to be discharged from the further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1875.—Ordered to be printed.

Mr. FRELINGHUYSEN submitted the following

REPORT:

[To accompany bill S. 937 and joint resolution S. R. 18.]

The Committee on the Judiciary, to whom was referred Senate bill No. 937, have had the same under consideration, and respectfully report:

That on the 20th of May, 1870, Congress incorporated the Washington Market Company. By that act, Congress granted to the company the lands fronting on Pennsylvania and Louisiana avenues for a term of ninety-nine years; and the act further confers on the company valuable franchises.

The company, on its part, was to erect on the land expensive buildings, which are carefully described in the act. As a rental, the company was, by fourteenth section, required annually to pay the city of Washington \$25,000 for relief of the poor of the District.

If the company did not within sixty days from the time it got peaceable possession of the lands commence and prosecute the work of erecting the buildings, twenty or more citizens of Washington might form an association, agreeing, as specified in fifteenth section, to perform all the conditions imposed by said act, and thereupon become a corporation invested with all the rights, privileges, and immunities conferred upon the original corporators. The original corporation failed to commence their work within sixty days, and the existing corporation organized under the provisions of the fifteenth section.

The act provides for a building on Pennsylvania avenue of five stories, with granite front, and for market-buildings in the rear, and enacts "that buildings for stores, halls, market-grounds, stalls, and other purposes, and all the market-buildings, shall be fully completed within two years or less from the commencement thereof;" and provides that if the company shall fail to complete the same within the time aforesaid, or fail to comply with any of the conditions of the act for the space of six consecutive months, the franchises by said act granted to said company shall be forfeited, and the rights and privileges thereby granted shall revert to the United States. And the act provides, by section 12, that on a non-compliance with or abuse of the conditions in the act imposed on the company, the privileges conferred by the act may be terminated, and adds, "which may be done by suit, in the name of the United States, to recover possession of said property."

This act constitutes a contract between the Washington Market Company and the United States. Has the company fulfilled its contract?

The Washington Market Company have not performed their part of the contract, as no progress, after more than four years since they came into the peaceable possession of the lands, has been made in the erection

of the main building on the avenues; and the company have, if the United States insist upon it, forfeited the lands and franchises, unless they present some sufficient reason for their non-performance.

The Washington Market Company give the following reasons for not performing the conditions imposed upon them by the act:

1. They claim that by a resolution of December 20, 1870, in consequence of the old market-building being destroyed by fire, Congress required the company to furnish temporary market accommodations, and also to erect, at the earliest possible day, the first stories of the market portion of the permanent building provided for by said act. That the company did furnish the accommodations, by erecting sheds on the lands fronting on Pennsylvania avenue, that being the only place they could be erected, as they were to go on and erect the permanent market-buildings on the other part of the lands, and that hence they are excusable for not having erected the main building on Pennsylvania avenue within the two years. Although four years have elapsed since the market company came into possession of the lands, and the market portions of the building have been completed for more than two years, it may be a question how far a party can insist on a strict forfeiture, who has, by its own instructions, interfered with the performance of the condition as to which the forfeiture is predicated.

2. It is further claimed that the United States has relieved the company from the performance of its contract by legislation found in the "Act making appropriation to supply deficiencies," approved March 3, 1873, which legislation is in these words:

For the purchase by the United States of the interest of the District of Columbia in the present city-hall building in Washington, now used solely for Government purposes, such sum as may be determined by three impartial appraisers, to be selected by the Secretary of the Interior, not exceeding seventy-five thousand dollars, the same to be applied by said District only for the erection of a suitable building for the District offices; and the governor and board of public works are authorized, if they deem it advisable for that purpose, to make arrangements to secure sufficient land fronting on Pennsylvania and Louisiana avenues, between Seventh and Ninth streets: *Provided*, That the Government of the United States shall not be liable for any expenditure for said land, or for the purchase-money therefor, or for the building to be erected thereon; and no land, or the use thereof, is hereby granted for the purpose of erecting any building thereon for such building.

Under the authority of this item of the deficiency bill, the company has conveyed the front on Pennsylvania avenue to the city of Washington, and claims that they are thereby relieved from the erection of the main building, particularly described in the act, and from the payment, *pro tanto*, of the rental, and, as a consequence, that the lands are vested in the city of Washington, free of any restriction, other than in the language of the act of March 3, 1873, that the lands shall be used for the purpose "of the erection of a suitable building for District offices."

The committee do not think that such is the effect of the act of March 3, for the following reasons:

The act of March 3 makes no mention of the Washington Market Company. It gives that company no power to convey the term to them granted. It does not release that company from the payment of the rental or the erection of the main building. It simply says that "the governor and board of public works are authorized, if they deem it advisable for that purpose, to make arrangements to secure sufficient land fronting on Pennsylvania and Louisiana avenues, between Seventh and Ninth streets."

Congress has no objections now, if the District authorities think it advisable, to their securing such lands; but if there are no lands there that they can secure, they would fail to secure them, or would not think

it advisable. The fact that in the locality there may be no other lands than such as Congress for a yearly rental has devoted to a public use, would not authorize the taking of those lands; but the power, granted on conditions that there were lands there that could be "secured," would fail.

The act of March 3 further expressly provides that the United States "shall not be liable for any expenditure for said land."

If the United States, by virtue of the purchase of these lands by the District authorities, surrender the right to have a valuable public building erected, (which it has taken great pains and given the use of valuable lands to secure, and also relieves the market company from a rental,) it cannot be said that the purchase is made without "any expenditure by the United States." Had not the assurance been given that an imposing building was to be erected, at a cost of \$700,000, without taxing the city, the grant certainly would not have been made. The act of March 3 further (in express terms) says, "That no lands, or the use thereof, is hereby (that is, by the act of March 3, 1873) granted for the purpose of erecting any building thereon."

It is claimed by the Washington Market Company that the item in the deficiency bill is no new grant of lands by the United States, because it had already granted them to the market company. Admitting, for argument, this astute answer, it cannot be denied that to give the act the construction the market company claim for it would undoubtedly be making a grant of a new use of lands, and the act provides that to be the very thing the United States *refuses* to do.

So the act of March 3 does not authorize the conveyance by the market company to the city of Washington. But the fact that the market company have made such a conveyance, is full proof that the market company have not performed, and do not intend to perform, the conditions upon which alone they are entitled to the lands granted them by the act, and are liable to have them forfeited.

The market company have also failed to pay the rental of \$25,000, but have made an arrangement with the city by which they are to pay only \$7,500.

The market company claim that, having conveyed to the city a valuable part of the lands, the amount of \$7,500 is as much as they are bound to pay; but this excuse for non-payment fails with the failure of the conveyance. The grant would not have been made had not the assurance been given that the poor of the city were to be relieved by the payment of \$25,000 for their benefit. Casting this burden upon the people, through taxation by the city authorities, is not changing the party who is to perform the condition of the grant, but is the absolute destruction of the condition.

The market company have violated the condition of their grant by this non-payment. The United States may, by proper measures, enforce its forfeiture. The United States, however, is not bound to enforce a forfeiture, and it seems to be admitted that the buildings erected by the company for market-purposes are suitable buildings.

The committee recommend the passage of Senate bill No. 937, reported from the Committee on Public Buildings and Grounds, repealing that part of the act of March 3, 1873, under which the conveyance has been made by the Washington Market Company, and annulling such action of the legislative assembly of the District of Columbia as proposes to reduce the rental which the company undertook, by the act of May 20, 1870, to pay, and that the accompanying joint resolution be adopted by Congress.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1875.—Ordered to be printed.

Mr. WASHBURN submitted the following

REPORT:

[To accompany bill S. 534.]

The Committee on Claims, to whom was referred the bill (S. 534) to pay Samuel Adams for services rendered in exploring the Colorado River and its tributaries, having considered the same, submit the following report:

Captain Adams's communication to the House of Representatives, first session Forty-first Congress, (Miscellaneous Document 37,) is composed of four parts: first, a letter to the Hon. E. M. Stanton, Secretary of War; second, concurrent resolutions of the Territory of Nevada, tendering thanks to Hon. Samuel Adams and Capt. Thomas Trueworthy; third, a petition to the honorable House of Representatives United States of America, signed by Samuel Adams; and fourth, a report of Capt. Samuel Adams on the exploration of the Colorado River of the West and its tributaries, to the Hon. W. W. Belknap, Secretary of War.

The first part briefly describes the efforts of Captain Trueworthy and Captain Adams to establish the business of transportation on the Colorado River with the lower Mormon settlements in Southern Utah and Southern Nevada. In this they were unsuccessful; and Captain Adams complains that parties in San Francisco successfully conspired to defeat their plans. Two trips were made by a vessel owned by Captain Trueworthy. It does not appear that Captain Adams had any money invested in the enterprise. When the vessel made her second trip Captain Adams did not know of it until the vessel had left San Francisco. He being in Oregon and hearing of its departure, proceeded to Calville, in Southern Nevada, built a raft, and descended the river to La Paz, where he met the boat, and returned to Calville. On one of these trips he proceeded to the head of the first cañon above Calville, there built a raft, and returned to Calville. The distance which he thus traversed he estimates to be eleven miles.

In the winter of 1857-'58 Lieutenant Ives explored the Colorado River, from its mouth to Calville, and made an elaborate report, accompanied by maps. This report was published by the General Government. The only part of the Colorado River included in Captain Adams's explorations which had not been explored and thoroughly mapped previous to the trips made by himself, Trueworthy, and Rodgers, was the eleven miles above Calville before mentioned.

The fourth part of the communication, which is entitled "An exploration of the Colorado River and its tributaries," &c., is a journal of a trip

from Breckinridge, in Colorado Territory, down the Blue to its junction with the Grand, and down the Grand for a number of miles.

It appears that Captain Adams, with several others, built small boats at Breckinridge, intending to explore the Colorado River, and expected to reach that river by descending the Blue and then the Grand. They started on their journey on the 14th of July, 1869, and continued until August 14th following. On August 8th three of the party abandoned the expedition and returned to Breckinridge. On the 15th the remaining members of the party, with Captain Adams, gave up the expedition also, and returned to Breckinridge.

That part of the Blue below Breckinridge, and the Grand, from the mouth of the Blue to the point where Captain Adams's party left the river to return to Breckinridge, was not an unexplored region.

In the first part of the report, when Captain Adams was at the head of the cañon, eleven miles above Colville, he says: "From an eminence at the head of the cañon I could see an open valley, 60 miles in length, extending to the northeast." Doubtless this was the valley of the Rio Virgen. The journal of the 12th, 13th, and 14th days of August has the following record:

Three years before I stood at the head of the Black or Big Cañon of the Colorado River, and, looking to the northeast, I could see a valley extending 75 miles in length. Now I stood at a point above, and, looking southwest, I could see the narrow territory which separated us.

It is easy to trace on the map the progress made by the party from day to day and until it passed through the Park Mountains, which form the western wall of Middle Park.

The record of distances shows that they went 95 miles. If we make allowance for his usual exaggeration of known distances, this point would be situated about half way between the mouth of the Blue and the mouth of Eagle River; but giving him the benefit of his own estimates, he should have reached the mouth of Eagle River, though in his journal he makes no mention of having seen that stream.

Supposing, however, that he reached the mouth of Eagle River on his trip down the Grand, he was yet one hundred and seventy-five miles from the Colorado River, or from the mouth of the Grand, in a direct line, and by way of the river more than three hundred miles. From the Rio Virgen, which he states that he could see, it was more than eight hundred miles by way of river. The two points are separated by more than seven degrees of longitude and four degrees of latitude.

In the heading to the fourth part of the document above mentioned the following words are found: "Discovery of ancient ruins, cities, canals, abandoned mines," &c.

In the body of the journal Mr. Adams goes on to describe the pueblos and ruins of New Mexico and Arizona, but does not, except in the heading, claim that he discovered them. They were in fact discovered early in the history of the explorations of North America, and many travelers give more or less elaborate accounts of them. In the first volume of Bancroft's History of the United States an account of these earliest explorations and discoveries in this country is given. Elaborate descriptions, with illustrations, of these pueblos and ruins can be found in various reports made to the General Government of the United States. See reports of Emory, Abert, Cooke, and Johnston, made in 1848, and reports of Johnston, Smith, Bryan, Michler, French, and Marcy, made in 1850, and by Ives in 1861. Very elaborate accounts of these pueblos and ruins can also be found in Schoolcraft's report.

A number of years ago Mr. Lewis H. Morgan, of New York, published an extensive account of the same ruins, pueblos, and people, in the North American Review. Indeed, the literature concerning this subject is very extensive.

On this trip which Captain Adams made down the Grand, he did not visit these pueblos, nor did he reach them. The nearest mentioned by him were more than four hundred miles away from any point which he claims to have visited. If he had at any time previous to that visited them, it cannot properly be said that he discovered them; and what he says of them is in part erroneous, and in part exaggerated. At the time of the writing of the first part of the document under consideration, which is dated March 29, 1867, the upper part of the Colorado River was unexplored. This unexplored portion he attempts to describe in two places, as follows: "From my observation, and from information received from Indians, and from the maps and correspondence in the Historical Society of Salt Lake City, to which I had free access through the kindness of George A. Smith, secretary of the same, I am satisfied there are none of those dangerous obstructions which have been represented by those who may have viewed them from a distance, and whose imaginary cañons and rapids for several hundred miles below had almost disappeared at the approach of the steamer." And again, in the fourth part, he speaks of looking over the country and seeing the mouth of the Rio Virgen, more than eight hundred miles away, as above quoted.

The whole paper is a complex tissue of errors and exaggerations. He starts on his voyage down the Blue, 700 feet above the highest peak of the Rocky Mountains. He discovers fields of wild grain, unknown to the botanists of North America. He discovers mines of precious metals of fabulous wealth. He states that those opposed to his exploration of the Colorado River cut down the timber along its banks, so that he could procure no fuel for his boat, &c.

Mr. Adams has made no map of any part of the Colorado River, or any of its tributaries. He has determined no latitude or longitude, and no altitude, and in describing parts which he has probably seen he often errs in giving correct position by several hundred miles. Whatever may have been the services of Mr. Adams, they were rendered without any authority of law, and your committee seeing no reason why the Government should be called upon to pay for them, report back the bill referred to them, and recommend that it be indefinitely postponed.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1875.—Ordered to be printed.

Mr. ANTHONY submitted the following

REPORT:

[To accompany bill S. 1198.]

The Committee on Naval Affairs, to whom was referred the bill (S. 1198) authorizing the appointment of Henry S. Wetmore a lieutenant in the Navy on the retired list, have had the same under consideration, and submit the following report:

The following response was received from the Navy Department in answer to a letter of reference from the committee inclosing a copy of the bill as introduced:

NAVY DEPARTMENT,
Washington, February 12, 1875.

SIR: In compliance with the request of Senator Anthony, of the Committee on Naval Affairs, as stated in your letter of the 4th instant, I inclose a statement of the service in the United States Navy of H. S. Wetmore; also, a copy of the medical survey in his case, dated November 18, 1864, from which it appears that his disability originated in the line of duty.

Very respectfully,

GEO. M. ROBESON,
Secretary of the Navy.

CHARLES B. GAFNEY, Esq.,
Clerk Committee on Naval Affairs, United States Senate.

Statement of service of H. S. Wetmore in United States Navy.

H. S. Wetmore appointed an acting master's mate in the Navy October 16, 1861, and ordered to the United States steamer Ellen.

October 1, 1862, again appointed an acting master's mate for duty in the Mississippi squadron.

December 5, 1862, promoted to acting ensign.

December 2, 1863, promoted to acting master.

July 9, 1864, promoted to acting volunteer lieutenant for gallant and meritorious services.

December 29, 1865, honorably discharged.

(Served in the Mississippi squadron from October, 1862, until October, 1864, and afterward in the North-Atlantic blockading squadron in command of the Commodore Hull, Eolus, and Wilderness, under Admiral Porter.)

Report of survey.

UNITED STATES STEAMER MALVERN,
Hampton Roads, Va., November 18, 1864.

SIR: In obedience to your order of the 17th we have held a careful survey on Acting Volunteer Lieutenant H. S. Wetmore, of the United States steamer Wilderness, rated a volunteer lieutenant; born in Vienna; aged 30 years; shipped at ———; and we respectfully report:

1. We find him affected with cerebral disturbance, resulting from fracture of the skull.
2. The duration of his disability will probably be of some months' duration.
3. We recommend leave of absence for three months.
4. We find sufficient evidence that his disability originated in line of duty, the fact being as follows, viz:

Mr. Wetmore was under orders to Columbus, Ohio; and he represents that while at the Cincinnati depot expediting the checking of his baggage for that place, he received a blow from a hatchet in the hands of the baggage-master, who, it appears, was the day before ejected from Mr. Wetmore's office for attempting to swindle a sailor, and the blow was inflicted upon Mr. Wetmore's head.

Very respectfully,

GEO. MAULSBY, *Surgeon.*
J. McCLELLAN, *Surgeon.*
J. SYLV. RAMSEY,
Assistant Surgeon.

Approved:

D. D. PORTER,
Commanding United States.

To Rear-Admiral D. D. PORTER,
Commanding United States North Atlantic Squadron.

Correct copy of original on file in Bureau of Medicine and Surgery.

H. C. NELSON,
Asst. to Bureau.

During his service he received commendation for gallant and meritorious conduct from Admiral Porter, Rear-Admiral Le Roy, Commodores John Guest, Murray, and numerous other officers of superior qualifications and high professional standing in the Navy.

The committee find that by reason of the wound, from which he has so long and severely suffered, he was debarred the privileges of the act of July 25, 1866, which provided that of the number of the line-officers on the active list, five lieutenant-commanders, twenty lieutenants, fifty masters, and seventy-five ensigns, may be appointed from those officers who have served in the volunteer naval service for a period of not less than two years, and who are either now in the service or have been honorably discharged therefrom.

We think this young man has earned by faithful service the position he asks for, and therefore report the accompanying bill and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1875.—Ordered to be printed.

Mr. ANTHONY submitted the following

REPORT:

[To accompany bill S. 1319.]

The Committee on Naval Affairs, to whom was referred the petition of Frederick F. Baury, praying that he be placed on the retired-list of the Navy, in consequence of wounds received in the line of duty, have considered the same, and find the facts as stated in his memorial.

Frederick F. Baury, at the age of seventeen, and in the month of August, in the year 1861, entered the Navy as a volunteer, and was appointed acting master's mate. He was on the frigate Congress when that ship was destroyed by the Merrimack, and opened the engagement on that occasion. He was most honorably mentioned by his commanding officer for good conduct and gallantry during the action, and promoted to acting master in consequence. He was then ordered to the South Atlantic squadron, and, while attached to it, cut out and captured by boats the steamer Alliance, during an attempt by the latter to run the blockade of Savannah. He delivered the steamer and cargo to the United States marshal at Boston. Master Baury was then promoted to the rank of acting volunteer lieutenant, and ordered to the frigate Colorado, Commodore Thatcher, where he served in both attacks upon Fort Fisher, and in the latter of which, finally resulting in its capture, he was shot down while gallantly leading a detachment of sailors against the face of the fort. The gunshot wound received by Acting Lieutenant Baury was of peculiar character. An Enfield-rifle ball struck him upon the side, near the hip, and passed through the body, emerging at the opposite hip. In its course it passed through the intestines, and by concussion so shattered the nerves that paralysis of the lower part of the body ensued, and, although largely overcome, at periods asserts itself now, and is likely to become permanent. The wounds from time to time open, and he has been repeatedly in hospital. Prior to this disaster Mr. Baury was an efficient officer and accomplished navigator, highly commended by his commanding officers. He was in charge of the deck of the Canandaigua, during a severe cyclone in the month of December, 1866, for 80 consecutive hours, and by this terrible exposure increased the calamitous effects of his wound. Selected for admission to the regular rank of lieutenant in the Navy in the early part of 1867, and at a time when he was undergoing severe surgical treatment at the Brooklyn Hospital, he resolutely journeyed to Hartford to undergo examination. He reached that city worn out in bodily strength, and in a nervous, anxious, and almost irresponsible mental condition, and was urged by his friends to abandon or defer the

attempted examination. He resisted entreaties, and in this wretched and helpless state presented himself and was rejected. We believe but for his wounds, and their fearful consequences, he would have easily passed and secured the rank of lieutenant. He was honorably discharged February 8, 1869.

The following warm testimonial in favor of this beneficiary, filed in the Department by Rear-Admiral Thatcher, strongly commends his case to our favorable consideration :

WINCHESTER, MASS., *December 8, 1873.*

Sir: I have the honor to request that the following testimonial may be placed on the files of the Department :

Mr. Frederick F. Baury, son of the late Rev. Alfred L. Baury, of Boston, entered the Navy on the breaking out of the rebellion as an acting master's mate, and sailed from Boston in the frigate Congress. A short time after this ship was attacked by the rebel ram Merrimack, and for gallantry in that action he was promoted to the rank of acting master. Mr. Baury was present in the various attacks upon Charleston, S. C., from 1862 to 1864, and in September of the latter year was promoted to the rank of volunteer lieutenant for good conduct in face of the enemy. Mr. Baury sailed with me in three different ships during the war, in the last of which, the steam-frigate Colorado, he displayed great gallantry in the various attacks upon Fort Fisher. On the day of the surrender of that fortress, and when orders were given to land seamen and marines to assault the face of that work, Lieutenant Baury was one of the first to volunteer for that hazardous duty, and in leading on his men, when near the forts, received a musket-shot through his body. When brought on board it was believed that he would not survive, but owing to skillful surgical treatment his life was saved, though he is totally unfitted for active employment. If not physically disabled by wounds (received in battle) I consider him in all respects competent to perform the duties of lieutenant in the Navy, and my judgment is based on personal observations.

Mr. Baury was honorably discharged from the naval service February 8, 1869.

I have the honor to be, sir, very respectfully, your obedient servant,

HENRY K. THATCHER,
Rear-Admiral

Hon. GEORGE M. ROBESON,
Secretary of the Navy, Washington, D. C.

Under the second and third sections of the act approved July 25, 1866, this volunteer officer was entitled to an examination by a board constituted under the law for admission into the Regular Navy. His conduct as an officer was unexceptionable, but failing to appear at the time designated by the Department, he was to forfeit all claim to the transfer. The papers before us show that at the time of the receipt of designation to appear before the examiners for volunteer officers he was (viz, November 20, 1866) confined in hospital by reason of wounds before referred to, which fact is certified by Surgeon John T. Taylor. Knowing the regulations, and the manner in which these examinations were conducted, and that his absence or neglect to appear as directed would be detrimental to his interests, and forever preclude the possibility of his being transferred to the regular service, he attended, but under such physical prostration that it was impossible for him to stand the examination, and for this reason and, as it appears, none other he failed.

The conclusions arrived at in no way establishes the precedent of legislating a man on the retired-list because of his bravery shown in battle, or of wounds received in the line of official duty, but simply to relieve one of the consequence of a failure to pass an examination which was only attributed to the result of wounds received.

The Secretary of the Navy, in his letter to the committee, dated April 9, 1874, speaks of the gallantry and worthy qualities of this officer, and suggests, as he was never in the regular service, he could not be put on the retired-list without an act of Congress authorizing

the same. The committee think that he should be placed in the position so nobly earned, and which the law intended that those like him should have. They therefore report the accompanying bill, and recommend its passage.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1875.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill S. 1320.]

The Committee on Claims, to whom were referred the petition and accompanying papers of Turner Merritt, have had the same under consideration, and make this report :

Mr. Merritt avers that he is now sixty-five years of age; that he is nearly blind; that he is completely impoverished by the results of the late war; that he has always adhered steadfastly to the Union; that his misfortunes grew in great part out of this fact: that he removed from the State of Massachusetts, many years ago, to the State of Louisiana, and located in the parish of East Baton Rouge, and engaged in the business of planting; that in the year 1862 he owned 113 bales of cotton, and endeavored to hide the same in a swamp and cane-brake from the confederates, at a distance of about nine miles from Port Hudson; that an officer of the Federal Army sought to protect his cotton for him, and took steps to make it more secure; that when he proceeded with such purpose, he found that General Banks had taken 103 bales of it to make defenses for the army at Port Hudson, and used the same for that purpose; that much of the remaining 10 bales were wasted, but parts of them were gathered up and sold for his benefit; that the amount of cotton so taken from him by General Banks was 41,200 pounds, and was reasonably worth 90 cents per pound; that he did not prosecute his claim for such cotton before the Court of Claims, first, because he could not raise the money necessary to do so; and secondly and mainly, because he could not at first show that the cotton was sold and the proceeds passed into the Treasury; that he learns from certain official papers that his cotton was sold, and the proceeds thereof used by the Government for legitimate purposes, which he mentions and refers to; that the Army took from him also, from time to time, for the proper use of the Army, many articles of the value of \$1,772.50.

The evidence offered to support these allegations is all *ex parte*. Taking it to be true, it makes a case in which the petitioner ought to have some relief; but the committee think that it is such a case as that the Government ought to have an opportunity to cross-examine the witnesses and produce counter-testimony, if it could. The sum claimed is large, and justice to the petitioner and the Government, in the opinion of the committee, requires that the whole case should be thoroughly examined.

The committee therefore recommend that the case be referred to the Court of Claims and tried as if the same were not barred by the statute of limitations, and report the accompanying bill for that purpose, and recommend that the same be passed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1875.—Ordered to be printed.

Mr. THURMAN submitted the following

REPORT:

[To accompany bill S. 1186.]

The Committee on Private Land-Claims, to whom was referred Senate bill No. 1186 for the relief of A. P. Jackson and others, as follows:

A bill for the relief of A. P. Jackson and others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That A. P. Jackson, James Woods, C. S. Fay, A. B. Meacham, J. M. Gapen, James McCoy, M. B. Sackett, C. H. Graham, W. H. Turner, N. W. Richardson, and Philip Palmer, their heirs, assigns, and legal representatives, shall be compensated by the United States for the lands, and improvements on the lands, purchased by them of the Government of the United States, of which they were deprived by process of law, because of the existence of a title paramount to that of the United States thereto at the time said lands were patented by the United States to said persons; and the Court of Claims is hereby directed to ascertain and determine judgments for the value of such lands and the improvements thereon, at the time said parties were respectively ejected therefrom by process of law, in favor of said parties, their heirs, assigns, and legal representatives; and any and all judgments so rendered by said court shall be paid out of money appropriated to pay judgments rendered by said court;

and to whom was also referred a resolution of the legislature of California in favor of the formation of a commission to adjust losses sustained by A. P. Jackson and others by being ejected from certain lands covered by a Mexican grant, as follows:

Senate concurrent resolution No. 29.

Whereas the Government of the United States did survey and declare open for entry certain land in Solano County, California, known as township 5 north, range 1 west; and

Whereas A. P. Jackson, James Woods, C. S. Fay, A. B. Meacham, J. M. Gapen, James McCoy, M. B. Sackett, C. H. Graham, W. H. Turner, N. W. Richardson, and Philip Palmer did enter upon the same for settlement; and

Whereas thereafter, on the 16th day of September, 1857, the President of the United States did, by proclamation, notify the public that said land was open for sale; and

Whereas said parties did pay for the same and obtain patents of the United States therefor; and

Whereas, in November, 1868, said parties, or their successors in interest, were sued in ejectment, and afterward duly ejected therefrom by virtue of a superior title, to wit, a Mexican grant; and

Whereas there is no relief given by the courts for losses thus occasioned, but the remedy is by act of the Federal Congress; and

Whereas the said claimants have petitioned Congress for relief and the appointment of a commission for ascertaining and adjusting said losses; and

Whereas equity and good faith require that the actual losses caused by the acts of the Federal Government's agents should be paid to the claimants: Therefore,

Be it resolved by the senate of the State of California, (the assembly concurring,) That our Senators in Congress be instructed, and our Representatives requested, to use all proper diligence in order to secure the formation of a commission to adjust, settle, and fix the losses which the above claimants have sustained. and to secure the payment of the same.

Resolved, That his excellency the governor be, and he is hereby, requested to transmit a copy of the preamble hereto and this resolution to each of our Senators and Representatives in Congress.

[SEAL.]

R. PACHECO,

President of the Senate.

MORRIS M. ESTEE.

Speaker of the Assembly.

report:

In November, 1839, Francisco Armijo presented his petition to the commanding general of the northern frontier of California, and director of colonization, for a grant of a tract of land about three leagues in extent, and known as Tolenas. Application was made to the prefect of the district, and by him the application was transferred to the governor of the department, who, on the 4th of March, 1840, issued to Armijo a formal grant of the premises. This grant was presented to the board of land-commissioners, and was rejected. On appeal to the district court the decision of the board was reversed and the grant confirmed, and at the December term of 1859 the decree of the district court was affirmed by the Supreme Court of the United States. (5 Wall., 444.)

The specific quantity of land granted was not described by metes and bounds in the grant, but reference was made to a map indicating the exterior limits within which the quantity was to be taken.

Township 5 north, range 1 west, was entered upon for settlement by the petitioners, A. P. Jackson and others, in good faith, and some of them commenced the improvement of their farms as early as 1853. They continued upon the land, improving the same and building dwellings, for some twelve years before they had notice of any adverse claim.

The township was surveyed on the 11th of October, 1853, and the survey was approved, and the land returned as public lands, and was so held to be as late as 1863.

The President, in his proclamation of date of September 16, 1857, offering for sale certain public lands of the United States, included this township, and the petitioners, A. P. Jackson and others, bought and paid for the same, and received patents from the United States therefor.

In November, 1868, the heirs of Armijo, or his successors in interest, brought suit in ejectment against the said petitioners, claiming the township as a part of the tract of land covered by the grant to Armijo, and duly ejected them, and also obtained judgment for back rents and profits.

The petitioners now come and ask that Congress make good their losses thus sustained.

The case presented by these facts is undoubtedly one of great hardship, but the hardship results principally from the absence of any statute in California for the relief of occupying claimants.

The prayer of the petitioners is not admissible upon general principles of law. Had they purchased of an individual who, without fraud, conveyed to them with warrantee, their damages in an action against the warrantor would be the consideration-money and interest, either from the time it was paid, or for the period for which they were liable for mesne profits. They could not, in such action against the warrantor, recover the value of the improvements they had made. And it is difficult to see why a different rule should obtain against the Government.

The Government was guilty of no fraud in surveying and selling these

lands, and the most that could be demanded of it would be that it should be liable as an individual grantor with warranty is liable. But it has not been the policy of the Government to incur even this liability. The extent of its liability was declared by the act approved January 12, 1825, (4 Stat. at Large, p. 80.) It was enacted "that every person, or the legal representative of every person, who is or may be a purchaser of a tract of land from the United States, the purchase whereof is or may be void, by reason of a prior sale thereof by the United States, or by the confirmation or other legal establishment of a prior British, French, or Spanish grant thereof, or for want of title thereto in the United States, from any other cause whatsoever, shall be entitled to repayment of any sum or sums of money, paid for or on account of such tract of land, on making proof, to the satisfaction of the Secretary of the Treasury, that the same was erroneously sold, in manner aforesaid, by the United States, who is hereby authorized and required to repay such sum or sums of money paid as aforesaid."

This law has remained substantially the same ever since the enactment of this statute, and therefore every person purchasing public lands of the United States, express or constructive, that in case of eviction by paramount title, the amount of his recovery against the United States is limited to the purchase-money he paid the Government, without interest.

In a few cases Congress, under special circumstances of the case, have afforded a larger measure of relief; but there is nothing in the cases now under consideration, so far as your committee can discover, to distinguish them from the general class of cases provided for in the statute.

The statute now in force on the subject is section 2362 of the Revised Statutes, as follows:

"The Secretary of the Interior is authorized, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause the sale cannot be confirmed, to repay to the purchaser, or his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated."

Whether this general law needs amendment, so as to afford a larger measure of relief in all cases, or in any class of cases, is a question that does not properly belong to this committee.

It is a question for the consideration of the Committee on Public Lands; and it is therefore recommended that your committee be discharged from the consideration of the bill, memorial, and resolution aforesaid, and that they, together with this report, be referred to the Committee on Public Lands, in order that that committee may consider whether any change in the general law should be made.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1875.—Ordered to be printed.

Mr. THURMAN, from the Committee on Private Land-Claims, submitted the following

R E P O R T :

The Committee on Private Land Claims, to whom was referred the resolution of the legislature of California for the relief of A. B. Gilbert, submit the following report:

This case belongs to the same class of cases as that presented in Senate bill No. 1186, and it is therefore recommended that your committee be discharged from the consideration of the resolution, and that it, together with this report, be referred to the Committee on Public Lands.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill H. R. 4663.]

The Committee on Claims, to whom was referred the bill (H. R. 4663) for the relief of John W. Douglass, late collector of the nineteenth internal-revenue district in the State of Pennsylvania, submit the following report:

The present Commissioner of Internal Revenue, John W. Douglass, was collector of the nineteenth internal-revenue district, in Pennsylvania, at Erie, from 1862 to April 1, 1869. In his memorial to Congress, subscribed and sworn to February 13, 1872, which was the foundation of the bill passed by the House, he sets forth that in the fall or winter of 1863 he took into his employ, first as clerk and subsequently as deputy collector, one Julius Degmier, a man of education and good standing, a teacher of languages, at one time, too, a superintendent of schools in the county of Erie, and an occasional preacher, and recommended to him by some of the best citizens of the district. Degmier remained in his office until the 28th August, 1865, about which time it was discovered that he was embezzling Government money and stamps, and, upon being charged with the crime by Douglass, confessed it. The loss by embezzlement amounted, he says, to \$19,067.76. He took measures to secure himself by a mortgage on the property of Degmier, and upon sheriff's sale it brought \$11,675. The attorney's fees and costs amounted to \$962.15, which, deducted from the price at which the property sold, left \$10,712.85 to be applied to the deficit, thus showing a balance of loss against the petitioner of \$8,354.91, with all the property of Degmier exhausted. The latter left the country, and has been entirely insolvent since the execution sale. Other employes were in the office, but he says the matter was investigated in the civil and criminal courts, and the defalcation shown to belong to Degmier alone. His prayer is that the accounting officers in the Treasury be directed to allow and pay him said sum of \$8,342.91 for office-expenses, so as to reimburse him for the loss he has sustained. This was the case made by his memorial, and, as above said, this memorial was sworn to.

It appears that his application for relief was presented to the House of Representatives, and on January 13, 1873, he made his statement before the Committee on Claims in that body, and was questioned by members of the committee. That examination is before us, and shows some facts not referred to in the memorial, the more prominent of which we proceed to state.

1. He did not require Degmier to execute any bond, with or without security, for the proper performance of his duties as deputy collector, and for accounting for the moneys he should receive. Rogers, the regular deputy, gave such a bond. He did not require it of Degmier, because he was a poor man. All the outside deputies gave bonds.

2. After discovering the defalcation he took from Degmier a bond in

the penal sum of \$15,000, dated August 30, 1865, conditioned that Degmier should pay or cause to be paid him (Douglass) the amount of the defalcation when ascertained, and that the obligee might liquidate the amount due on the bond at the apparent defalcation in said office without *scire facias* or notice to Degmier, and that judgment for the amount might be entered up as confessed at any term of the court without stay of execution, &c. This bond was secured by a mortgage executed by Degmier and his wife on their homestead.

On June 7, 1867, judgment was rendered on the foreclosure of this mortgage for \$16,578 and costs of suit. On the 26th of August following this property was sold for \$11,675, and was bid in by Douglass. The taxed costs were \$115.41. On February 13, 1871, Douglass receipted for the amount of his bid, less costs on the writ. But it appears from his examination that in the meantime Douglass had sold the property to another party (Curtis) for the sum of \$13,000; and when questioned he states that he might have realized still more had he sold a year sooner, the price of property being on the decline at the time of sale. The amount he thus realized was in excess of the sum at which he bid off the property \$1,325. He does not mention this fact in his memorial. In his statement before this committee he says the property was sold to Curtis for \$14,000.

3. After procuring the mortgage Mr. Douglass allowed Degmeir to leave for Europe, where he went to dispose of a railroad charter and some oil stocks, and intrusted him with the disposition of certain stocks he (Douglass) owned—stock in an oil company organized upon basis of supposed oil lands, along the Red River, in Kentucky—and gave him a power of attorney for that purpose. Degmeir returned in a few months, and again left for Prussia in about a month, and in neither instance did Mr. Douglass seek to restrain him by civil or criminal process. But after his second return, and before any interview, he caused him to be arrested on criminal process for the embezzlement. This was in May, 1867. After a long delay an indictment was found, but Degmeir was acquitted upon the ground that the statute of limitations had barred the prosecution. This ruling of the judge was probably erroneous, but the fact of Degmeir's discharge is the only one material to be stated. After this Degmeir departed to Europe for good, abandoning his family. Why Mr. Douglass did not prosecute him criminally sooner is explained by him as owing to the tears and supplications of Degmeir, and the hope he entertained that he might realize from his operations abroad enough money to re-imburse Douglass.

4. The records of the Treasury Department show that the Secretary made special allowances to Mr. Douglass—

From September 16, 1862, to June 30, 1863 :

For personal compensation	\$3,500 00	
For expenses of administering the office.....	2,376 07	
		\$5,876 07

From July 1, 1864, to June 30, 1865 :

For personal compensation	3,500 00	
For expenses of administering the office.....	5,000 92	
		8,500 92

From July 1, 1867, to June 30, 1868 :

For personal compensation	3,500 00	
For expenses of administering the office.....	4,959 36	
		8,959 36

From July 1, 1868, to March 31, 1869 :

For personal compensation	3,500 00	
For expenses of administering the office.....	3,577 28	
		7,077 28

The Secretary states the law under which these special allowances were made, but does not say when they were made. It appears, however, that the allowances were in point of fact made in July, 1872.

During the time this embezzlement was going on, Mr. Douglass was interested in some oil-speculations, to no very great extent, however, but they required his absence from time to time to look after his interests.

At various times, too, Degmier was in sole possession of the office, with full access to the safe and its contents. This usually occurred when the other parties were absent at dinner.

Mr. Douglass, when on the stand as a witness before the House committee, said that his regular pay as collector averaged about \$2,500 per annum, but that the additional allowances made him raised this to \$3,000 a year. The records of the Treasury Department, however, show that the special allowances raised his compensation to \$3,500 for much of the time, and that the sum total of the increase of compensation credited to his account, after deducting the income-tax, was \$3,303.28.

5. It transpired, upon the examination of Mr. Douglass before the House committee, that his loss, as stated by himself, was:

Defalcation	\$13,000 00
Stamps added.....	3,500 00
	<hr/>
	16,500 00
Realized by sale to Curtis.....	13,000 00
	<hr/>
	3,500 00
But he was put to some costs. The court-record shows that the costs paid were \$115.51. Mr. Douglass says in his memorial that the costs and attorneys' fees were	962 15
	<hr/>
This added, would make his loss, exclusive of interest.....	4,462 15
But in his examination before the Senate committee it appears he sold the property for \$14,000, instead of \$13,000, hence there should be deducted from the above	1,000 00
	<hr/>
	3,462 15

Should Mr. Douglass be relieved to this amount, or that stated in the bill, or any amount?

There are three questions of fact involved in the consideration of this case; none of law. He admits his liability at law by accounting to the Treasury for the deficit. He comes to Congress to relieve him from what he esteems the hardship of the law.

The questions of fact are these:

1st. Was he sufficiently careful, prudent, and diligent, as a Government officer, in conferring upon Degmier such power to do mischief without requiring security commensurate with the trust?

2d. Was he sufficiently vigilant in allowing the embezzlement to go on for two years without detecting it?

3d. Have the special allowances sufficiently re-imbursed him, supposing the above questions be answered in the affirmative?

On the first point, the committee are of opinion that Mr. Douglass should have required security of Degmier, before conferring such capacity to wrong him and the United States. He exacted security of Rogers, his deputy, and of every outside deputy, three in number; Rogers giving a penal bond of \$20,000, the other deputies of \$10,000 each. Why? We can imagine no answer not applicable to Degmier except that the latter was poor and possessed an excellent reputation. The very reasons Mr. Douglass advances to Congress for relief, turn upon

him here. He says Degmier was a man of excellent character; had many friends who interested themselves in getting Douglass to appoint him to this position. If this be so, how easy for such a man to obtain security to any required amount. Douglass could well say to Degmier's friends, "Prove your faith by your works; if he be a proper man to have access to untold amounts of Government funds, become his guarantors that he will not steal."

Should Douglass stand upon ceremony in requiring security for good behavior when he was required to give that security himself? The policy of the law would not allow him to touch a dollar of money belonging to the United States, when collected, until he gave such bond, yet he asks Congress to excuse him, when, having delegated this power to receive money to a third person to act in his behalf, he has been deceived in his man. The United States are wholly without fault in this loss. Douglass is not, because he did not require of Degmier what was reasonable in itself and what he himself had to do.

On the second point, after hearing the explanations of Mr. Douglass, the committee are not clear that the embezzlement should have been discovered sooner, considering the two facts that unlimited confidence was reposed in Degmier, and that in the early organization of the internal-revenue system the collector collected large sums of money in advance of the lists made by the assessor, so that at one time the cash on hand exceeded by \$60,000 what was charged to Mr. Douglass. When the embezzlement was discovered, he still had on hand \$10,000 or \$15,000 in advance of what he was charged on the lists furnished by the assessor. A part of the embezzlement consisted in the receipt by Degmier of money for licenses, he pocketing both money and voucher. Besides, the books were kept by the system of double entry, with which Mr. Douglass was not familiar. It appears, however, that the book-keeper (Brewster) found difficulties with the entries some time before he disclosed his suspicions to his principal, and then a trap was laid to find out whether money was abstracted, how and by whom, which soon resulted in detecting Degmier as the thief.

On the third point, the committee content themselves with giving the results as drawn from the letter of Secretary Boutwell and the two examinations of Douglass.

As explained by the latter, all the allowances described by the Secretary under the head of "expenses of administering the office," aggregating \$15,913.63, covered only actual expenditures, and were allowed in July, 1872, more than three years after leaving the office.

The allowances made at the same time for "personal compensation," at \$3,500 per year, amounted, according to Mr. Douglass's explanation, only to the net sum of \$3,303.28 above his regular salary and commissions.

When these allowances were made they were applied to the liquidation of the deficit on the Treasury books of Mr. Douglass's account as collector, and produced but \$900 and a little upward, which was paid to him; but this sum or nearly that was subsequently paid into the Treasury to discharge a fresh deficit discovered.

To recapitulate: The committee find, from Mr. Douglass's statement before the two committees, that the account stands as follows, omitting the interest paid by him to the Treasury:

Degmier's defalcation	\$13,000 00
Add stamps	3,500 00
	<hr/> 16,500 00

Costs and attorneys' fees paid.....	\$962 15
	<hr/>
Amount realized by the sale of the Degmier property to Curtis.....	17,462 15
	<hr/>
	14,000 00
Actual loss.....	3,462 15

If the amount paid for costs and attorney's fees is deducted, the loss is reduced (exclusive of the interest paid by him) to \$2,500, while the allowance made to him in July, 1872, for additional compensation, was \$3,308.28.

Mr. Douglass has handed the committee the following statement of the account, upon which the bill appears to have been framed :

Degmier deficiency.

Revenue account :

Amount paid by Douglass to apply on deficiency.....	\$15,406 53
Balance still due the United States from Douglass.....	916 99
Amount paid by Douglass to make up deficiency in stamp-account.....	3,580 00
	<hr/>
	19,903 52

Realized from sale of Degmier property as follows :

Sale to General Curtis.....	\$14,000 00
Deduct costs and attorneys' fees.....	962 15
	<hr/>
	13,037 85
Balance.....	<hr/>
	6,865 67

This account, however, does not agree with his statement before the House committee in January, 1873, and it is presumable that the difference is owing principally to the interest-account and a new deficit of about \$900 discovered. His statement, then, was explicit that the defalcation and stamp-account amounted to \$16,500.

Upon the whole case as made, the committee feel constrained to report adversely to the House bill, and recommend its indefinite postponement.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 22, 1875.—Ordered to be printed.

Mr. PEASE submitted the following

REPORT:

[To accompany bill S. 1343.]

The Committee on Claims, to whom was referred the petition of Dialogue & Wood, ship-builders, of Camden, N. J., praying for the payment of twenty-four thousand two hundred and thirty-seven dollars and eighty-four cents (\$24,237.84) for materials furnished and labor performed by them in the construction of the United States Coast-Survey steamer Hassler, submit the following report:

It appears that the said Dialogue & Wood, on or about the 17th of August, 1870, entered into a contract with the Government to build and furnish and deliver, in accordance with certain specifications annexed thereto, a steamship of about (350) three hundred and fifty tons measurement, for which the said Dialogue & Wood were to receive the sum of sixty-two thousand dollars, to be paid in installments as the building of the vessel progressed.

The vessel was to be built of such model and materials as the hydrographic inspector of the Coast Survey should approve. By the terms of the contract, the vessel was to be built and delivered afloat and complete in all respects, and ready for service, at the port of Philadelphia, Pa., on or before the 1st day of May, 1871.

It was further stipulated that, in case of failure to deliver the vessel at the time and place specified, there should be deducted from the last payment one per cent. per day for the time of delay.

The vessel was actually delivered October 29, 1871, at which time she was formally accepted by C. P. Patterson, hydrographic inspector of the Coast Survey, in the following letter:

CAMDEN, October 31, 1871.

GENTS: The steamer Hassler being finished, with the exception of some small items, I accept her on part of the Coast Survey. I will to-morrow hand Mr. Hein, the disbursing agent, the necessary certificate for the balance due on the last payment. Your extra account against the Hassler will be settled as soon as Mr. Emery and Mr. Mapes have time to attend to the details, which will be as soon as the Hassler leaves Boston, say at the end of two weeks, when, I have no doubt, all points can be easily settled.

Yours, truly,

C. P. PATTERSON,
Hydrographic Inspector Coast Survey.

DIALOGUE & WOOD,
Camden.

The claim now presented against the Government relates to this extra account referred to in the above letter, and which Captain Patterson, hydrographic inspector of the Coast Survey, predicts will be settled in about "two weeks," which would have been on or about November 17, 1871, and the evidence shows that the items of labor and materials were

approved by the Government officers having charge of the work. The account is as follows:

The United Coast Survey to Dialogue & Wood, Dr.

For extra work on United States Coast-Survey steamer Hassler—	
Putting in 24" × 24" reverse-bars, instead of 2" × 2".....	\$384 00
Lengthening out frames on poop-deck.....	497 00
Difference in putting in 7" beams, in place of 5", around hatches; 3,650 pounds, at 15 cents.....	547 50
Altering stern-molds.....	200 00
Putting in a 20", instead of 16" lodger-plate; 2,730 pounds, at 15 cents.....	409 50
Altering side keelsons.....	350 00
Altering bilge-keelsons—making them intercostal with extra plate.....	360 00
Altering center keelsons to three topping-plates and double angle-irons..	410 00
Fore and aft side-stringers of double angle-iron and reverse angle-fasten-ings; 5,600 pounds bars, 300 pounds rivets, at 15 cents.....	840 00
Building double bottom, with materials therefor.....	4,000 00
8 belt-frames put in fore and aft; 5,760 pounds iron, 1,920 pounds angles, 700 pounds rivets.....	1,257 00
Putting 2 extra keelsons from after bulk-head to stern lodger-plate to strengthen overhang; 480 pounds iron, 1,500 pounds angles, 300 pounds rivets.....	342 00
Replacing sheer-strake and taking down old one and carrying strake out same thickness to bow and stern.....	1,000 00
Insurance paid for United States Coast-Survey policies; \$15,000 4 months, \$10,000 4 months, \$25,000 2 months, at ½ per cent. per month.....	375 00
Altering position of port shutters and putting in two extra ones.....	150 00
Cementing bottom of boat with hydraulic cement and North Carolina tar..	325 00
Changing position of bulk-heads and piercing frames.....	45 00
Putting in one bulk-head extra in front of boiler bulk-head; 3,400 pounds, at 15 cents.....	510 00
Building recess in bulk-head abaft of engine.....	175 00
Extra frames, plating, and floors under engine.....	90 00
Putting 12 extra 12" air-ports, \$360; and 2 8" ones, \$40.....	400 00
Two extra glasses for same.....	12 00
Lining boat with 1", 1½", and 2" plank, with battens, &c.; 8,240 feet, at \$60; 520 pounds nails; 71 days' labor, \$4.....	830 40
Altering skylight from one shutter to two.....	63 00
Putting on a top-gallant fore-castle.....	1,430 00
Extra joiner-work fitting vessel out for the accommodation of the explor- ing expedition; paneling poop-deck, walnut beds and berths, movable partition, and extra state-rooms.....	2,100 00
2 forward water-tanks.....	420 00
2 after-ward water-tanks.....	530 00
Extending port and starboard poop-gangways so as to avoid dead-eyes..	94 00
Putting on hammock-rail.....	250 00
Changing wheel-house.....	40 00
Continuation of deck-house back to poop-deck.....	255 00
Increasing poop-deck from 2" to 2½" thick.....	61 00
Putting on house forward on deck and placing two closets on same, com- plete.....	335 00
Putting on compressors.....	75 00
One patent steering-machine.....	225 00
Altering same, \$53.84; putting up and timbers, \$145.....	198 84
Putting on attachment for Mr. Emery.....	81 00
Putting bell on deck, with rivets.....	11 00
Putting reeling-engine on deck and connecting to boiler.....	215 00
Freight and hauling same.....	25 00
Freight on condenser, \$1.02; and cartage, \$2.50.....	3 52
Handling anchors and chains.....	50 00
Two swivels to galley, and securing same.....	23 00
Paving floor with bricks in cement.....	49 00
Iron stanchions in place of wooden rail on poop-deck, and continuing it..	343 00
Blocks and falls for boats, and eight sets swivel-hooks.....	196 00
Four strongbacks for davits.....	30 00
Difference between plain smoke-stack stays and galvanized-iron-wire rope and thimbles and sister-hooks, and splicing same.....	43 00
Awning-stanchions, (wrought iron).....	510 00
Eyes in plank-sheer and clips riveted to hull.....	76 00

Boom for anchor-davit and iron-work for same	\$32 00
Altering davit to 3¼"	110 00
Five spare condenser-tubes	11 00
Addition to smoke and escape pipe	75 00
980 pounds brass flanges in place iron	333 20
Spare hand-hole plates	27 00
Putting up strainer	71 00
Boiler-tubes	45 76
Skylight-glasses	20 62
One oil-tank	125 00
One tallow-tank	75 00
Four ash-buckets	80 00
One propeller-wheel	360 00
Six tons coal for trial-trip	42 00
Launching-expenses	145 00
Changing eccentric-straps from iron to brass	103 00
310 pounds spare brass boxes fit up for engine 75	232 50
Railroad on spars	150 00
Serving rigging all the way up	200 00
Extra-sized spars, 18" to 20"	60 00
Altering tanks	40 00
Altering air-pump and new piston	160 00
40 spare grate-bars	150 00
Extra fire-room tools	30 00
Carved head-piece and carvings on stern	50 00
Gratings and fixings on boats	78 00
Extra night-work in finishing-up boat according to agreement	332 00
Extra charged by Pancoast & Maule	123 00
Building boilers 50 per cent. larger than contracted for, with engine, condenser, wheel, and every other part in proportion	10,000 00
Freight upon boat from Charleston	45 00
Wheelock's pistons, and freight upon the same	355 34

35,079 18

Upon which Dialogue & Wood have received payments in installments as follows:

November 21, 1871	\$5,000
May 25, 1872	3,000
July 9, 1873	2,451
	10,451 00

24,628 18

Deducting for two last items of bill which were omitted in amount mentioned in memorial

390 34

Amount asked for

24,237 84

In response to the inquiry of the committee, C. P. Patterson, now Superintendent of the Coast Survey, submits the following statement of the accounts:

The total claim of Dialogue & Wood is	\$35,079 18
Amount disallowed by overcharge and covered by contract	22,419 54
Amount allowed	12,659 64
Amount paid	10,456 28

The balance was not paid, (he adds,) as being more than covered by the penalty for non-delivery of the vessel at the time specified.

Without going into the details contained in the affidavits, statements and exhibits filed in the case, it appears that the contractors claim the, sum of \$24,237.84, which the Government officers decline to pay, for three reasons:

1. That the extra work and material was "overcharged" to the amount of \$12,419.

2. That the difference in engines ought, under the contract, to come out of the contractors; amounting to \$10,000.

3. That, owing to the non-completion of the vessel at the time stipulated in the original contract, the contractors have forfeited whatever amount may be due them.

It is admitted that extra work was done and material was furnished substantially as set forth in claimants' itemized bill.

The claim must be decided upon the facts and circumstances of the case as presented by the proofs and statements submitted.

With respect to the alleged "overcharge" for work and material, the claimants present their own sworn statements to the reasonableness of the charges, accompanied with a detailed statement of the cost of each particular item; and they compare the same with the cost according to the rate of 15 cents per pound given previously for work not in the contract, showing that the bill as presented does not exceed this estimate.

In corroboration they file the certificates of a large number of leading ship-builders, engineers, and experts, all certifying that they have examined the bill, and that the prices charged are moderate and just and do not exceed market rates. Some of these statements are as follows:

OFFICE OF W. B. REANEY, MARINE ENGINEER AND ARCHITECT,
309 WALNUT STREET, Philadelphia, January 2, 1875.

Having examined the bills of Dialogue & Wood, which have been made as charges of extra work on account of alterations made to hull and machinery of United States steamer Hassler while under construction, I have no hesitation in stating that I consider their charges moderate, and that they should be paid without any abatement whatever. Having a practical knowledge of the costliness of alterations, I have made it a rule in all contracts with which I am connected to have the cost determined before the work is commenced, and that agreed upon. This not having been done in this instance, the United States should pay this bill, as the charges are in some instances less than I am approving for the mercantile marine.

As to the delay of completion, it cannot be charged to the fault of the builders, as no firm would agree to a specified time and allow alterations to be made during the progress of the work, and this is the first instance of which I have heard of a claim being made under like circumstances. The ability of this firm to fulfill a contract on time specified, is, in my opinion, undoubted. They built, under my superintendence, an ice-boat for the city of Philadelphia, at a cost of \$245,000, in seven months, and delivered her complete, ready for service on the day agreed upon, and there was not an item of extras charged or paid. They have done other work, and still have orders under my care. They have invariably given me satisfaction as to time of delivery and charges.

Very respectfully,

W. B. REANEY.

W. B. Reaney is the leading engineer in the United States for marine work, agent for construction and repair in America for the French Insurance "Bureau Veritas," and late proprietor of steamship-building works at Chester, Pa., now controlled by John Roach & Son.

PHILADELPHIA, April 25, 1874.

After examining the various amounts charged by Dialogue & Wood for labor and material furnished in the bill of extra work upon the United States steamer Hassler, I consider them reasonable and cheap, and the price, fifteen cents per pound for iron-work, is very low, considering the way it was performed; much of it could not be done for less than twenty cents per pound. In regard to the boat being completed on time, I think there can be no doubt of this, when the amount of extra work performed is taken into consideration; those not conversant with the minutiae of vessel-building have little idea of the time that is lost by alterations and additions. I have not the slightest doubt that Dialogue & Wood would have had the boat completed on time if there had been no alterations or detentions outside of themselves. Slight alterations in one department will often cause days of labor in another, and unaccountable loss of time.

SAMUEL ARCHBOLD,
Engineer and Iron-Ship-builder for the Philadelphia and Reading
Railroad Company, and late Chief Engineer United States Navy.

PHILADELPHIA, April 25, 1874.

In this case of Dialogue & Wood for compensation for building the Hassler, I have to say that undoubtedly the steamer was built on time, and that no deduction in equity or law should be made under the circumstances. It is impossible for builders to specify any time, when so many alterations are made; and I believe that these builders are as quick and expeditious as any along the Delaware River. Their bill is

certainly reasonable, when the work performed for each item is taken into account, even though the aggregate is heavy, and I hope their claim will be allowed.

THOMAS CLYDE.

Mr. Clyde is well known as one of the largest steamship-owners in the United States.

Similar testimony to the justness of the claim and the reasonableness of the charges is appended from many witnesses of highest character. The testimony seems to fully cover all the objections raised by the Government to the payment of the balance due Dialogue & Wood.

With regard to the extra cost of engine and boilers and the claim set up by Mr. Emery, that inasmuch as the contract stipulates that the "machinery is to be built from our design and plans, and in consideration thereof the contractors are released from the very strict conditions of speed and fuel," and that it would appear, therefore, that they have no legal right for extra compensation for the construction of the machinery, whatever its size, the committee do not think that this would be a just construction of the contract, considering the fact that the engine and boilers actually placed in the vessel were much larger and more powerful than those called for by the specification, and that it was found on trial that the vessel was 25 per cent. faster than a strict compliance with the contract demanded. On this point the letter of Charles E. Emery, written under date of Boston Navy-Yard, November 6, 1871, is conclusive as to the equity of Dialogue & Wood's claim. He says:

The vessel makes nine and a half knots under steam; when somewhat pushed I think will run ten knots; under easy steam with fresh breeze and sail we made 11 knots. The average speed under steam alone was 7½ knots, which was accomplished on two and a half tons of coal per day. The last two days we ran faster and burned two and three-quarters tons. Captain Patterson was willing she should burn 4 tons at a speed of 8 knots. We shall beat that at least 25 per cent.

Very truly, yours,

CHAS. E. EMERY.

With respect to the non-delivery of the vessel at the time stipulated in the contract, it would seem that the numerous changes and alterations made in the character of the work from time to time, by order of the Government officials, amounted to deviations from the contract on the part of the Government which would, in point of law, release the other contracting party from a strict compliance with its terms. Moreover, it appears that Messrs. Emery and Patterson gave or promised extensions of the time for the completion of the vessel up to October 20. The vessel was actually delivered October 29. Doubtless the delay caused some inconvenience, and perhaps some irritation on the part of the Government officers, but it nowhere appears that the Government suffered any material damage which could be computed in dollars and cents. The vessel was accepted by the proper officer on the part of the Government, and settlement promised of Dialogue & Wood's claim for extra work. The evidence shows, without this promise of payment by the Government officer, Dialogue & Wood would not have delivered the vessel. The testimony in support of the claim is very full and satisfactory, and covers all the points of objection offered against payment by the officers of the Coast Survey.

The certificates to the reliability and integrity of Dialogue & Wood, as well as their promptitude, are from gentlemen of the very highest character connected with the commercial interests of the country. These parties all unite in the expression of confidence in the claimants, and bear testimony, based upon actual examination, to the justness of their claim.

In view of the equities involved in this case, and the *ex-parte* character of the testimony submitted, your committee are of the opinion that the case should undergo a judicial investigation, and to that end recommend its reference to the Court of Claims, and accordingly submit the accompanying bill and recommend its passage.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. CLAYTON submitted the following

REPORT :

[To accompany bill S. 1072.]

The Committee on Military Affairs, to whom was referred the bill (S. 1078) for the relief of J. K. Thompson, late second lieutenant Twenty-fifth United States Infantry, have had the same under consideration, and submit the following report :

This officer was tried by court-martial in June, 1874, and sentenced to be cashiered. The court consisted of seven members, one of whom was allowed to act as counsel for the defendant, a proceeding admitted by all who have examined the case to be irregular. Four of the court afterward recommended Thompson to the clemency of the reviewing authority.

Your committee have examined the court-martial proceedings and find the evidence to be contradictory, and much of it of a circumstantial nature; that the papers and affidavits filed by Thompson effectually disprove much of the evidence given before the court, and your committee can but think that if sufficient time had been allowed this officer to furnish the evidence to the court that has been placed before this committee, that the findings of that court would have been entirely different.

Lieutenant Thompson had been in continuous service in the Army from the commencement of the late war, and had been promoted from the ranks for gallant and meritorious conduct, and at the close of the war was appointed a lieutenant in the Regular Army. He furnishes testimonials from a great many officers with whom he served, all speaking of him in the highest terms. No charge was ever brought against him until this, for which he was tried.

In view of all the circumstances, your committee are of the opinion that Lieutenant Thompson is entitled to relief, and therefore report back the bill with amendments, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. SPENCER, from the Committee on Military Affairs, submitted the following

REPORT:

The Committee on Military Affairs, to whom was referred the petition of Patrick Sullivan, submit the following report :

Petitioner represents that he was commissioned as first lieutenant in the Nineteenth Wisconsin Volunteers, being authorized and directed to recruit men for said regiment; that he recruited, between January 8 and February 26, 1862, sixty-four men, when he was ordered to bring them into the barracks at Racine, having subsisted and transported these men at his own expense; that he obeyed said order, leaving his recruits at the barracks, and recruited eight more men, when, upon his return, he found these recruits had been distributed to fill other vacancies, and his muster as first lieutenant was refused, as the complement of officers for said regiment was filled. Petitioner represents that he sold his property to obtain means to recruit, subsist, and transport these men, and being thus deprived of his commission, he enlisted as a private in another regiment, was severely wounded in battle, and is now a pensioner. He asks to be re-imbursed these expenses, on an account stated, amounting to \$1,969, for which a bill is interposed.

While the facts stated, if true, show a severe case of hardship and wrong, there is no proof *aliunde*, corroborating the charges of the petition, except in a general way. There is no proof as to the account for disbursements beyond the estimate of the petitioner. If petitioner was commissioned, with an understanding with the governor of the State that he should recruit men at his own expense, some evidence of the fact should be adduced. The committee ask to be discharged from further consideration of the petition.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. SPENCER, from the Committee on Military Affairs, submitted the following

REPORT:

The Committee on Military Affairs, to whom was referred the memorial of officers of the Masonic Lodge, praying compensation for the destruction of the Masonic Hall at Georgetown, S. C., by United States troops in 1865, report:

The petition in this case is accompanied by proof sufficient to corroborate the facts charged that this Masonic Hall was wantonly burned by United States troops at the close of the war in 1865 and after hostilities had ceased, and that the property was worth \$12,000 to \$15,000. It had been occupied as quarters for United States soldiers, who, being relieved by a colored regiment, burned the building in revenge. Inasmuch as the President has vetoed acts awarding compensation for property destroyed during the rebellion, the committee are of opinion that this case, notwithstanding its justice, comes within the rule established, and, therefore, ask to be discharged from further consideration of the same.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. SPENCER submitted the following

REPORT :

[To accompany bill H. R. 3272.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 3272) for the relief of John T. Burchell, of Knoxville, Tenn., for services rendered in a small-pox hospital, submit the following report:

The report of the House Committee on Military Affairs, herewith appended, being fully borne out and warranted by the record, is adopted as the report of the Senate Committee. The passage of the bill is therefore recommended.

The Committee on Military Affairs, to whom was referred the petition of John T. Burchell, of Knoxville, Tenn., have had the same under consideration, and report:

It appears from the testimony in this case that claimant was, on or about the 10th day of December, 1863, in the employ of the Quartermaster's Department, United States Army, at Knoxville, Tenn., and, at the request of Dr. E. Goetz, United States Army, he abandoned his employment to take charge of a small-pox hospital, and rendered service therein for one month and two days. Claimant alleges that Doctor Jackson, medical director Twenty-Third Army Corps, agreed to pay him at the rate of \$150 per month; and it appears that the only compensation he received for the service was \$25, paid him by Quartermaster Captain Lunt.

The committee are of the opinion that the amount of \$150 per month was not an unreasonable compensation for the character of the services rendered, and therefore report the accompanying bill and recommend that it pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. EDMUNDS, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary, which was directed by the resolution of the Senate adopted on the 13th instant, to inquire and report whether the United States or any department of the Government is legally bound to now carry into effect any contract made pursuant to the act of June 1st, 1872, respecting additional mail-service between San Francisco, China, and Japan, respectfully report:

That under the act of Congress of February 17, 1865, a contract was made between the Postmaster-General and the Pacific Mail Steamship Company for the mail-service therein provided for, at the price of \$500,000 per annum, which contract is still in operation and unexpired.

On the 1st day of June, 1872, in the act making appropriations for the postal service for the year ending June 30, 1873, there were enacted the following provisions:

SEC. 3. That the following sums, or so much thereof as may be necessary, be, and the same are hereby, appropriated for the year ending June thirtieth, eighteen hundred and seventy-three, out of any money in the Treasury not otherwise appropriated, namely:

For steamship service between San Francisco, Japan, and China, five hundred thousand dollars. And the Postmaster-General is hereby authorized to contract with the lowest bidder, within three months after the passage of this act, after sixty days' public notice, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, for the conveyance of an additional monthly mail on the said route, at a compensation not to exceed the rate per voyage now paid under the existing contracts, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof; and the contractors under the provisions of this section shall be required to carry the United States mails, during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof: *Provided*, That all steamships hereafter accepted for said service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war, and before acceptance the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with: *Provided*, That in all cases the officers of the ships employed in the service herein provided for shall be citizens of the United States, and that persons of foreign birth, who have according to law declared their intention to become citizens of the United States, may be employed as though they were citizens within the meaning of this section, or of any act or acts specified in the act of June twenty-eighth, eighteen hundred and sixty-four. And the Government of the United States shall have the right in case of war to take for the use of the United States any of the steamers of said line, and in such case pay a reasonable compensa-

tion therefor: *Provided*, The price paid shall in no case exceed the original cost of the vessel so taken; and this provision shall extend to and be applicable to the steamers of the Brazilian line hereinafter provided for.

Pursuant to this provision advertisement was made, and the Pacific Mail Steamship Company being the lowest bidder, a contract was made with it by the Postmaster-General, according to its requirements.

The advertisement prepared by the steamship company, and the contract entered into, will be found in the papers accompanying a letter from the Postmaster-General to the chairman of the committee, dated February 17, 1875, and herewith returned; pp. 7, advertisement; 10, proposal; and 21, contract.

In order to provide for the performance of this contract on the part of the United States, the act of March 3, 1873, (vol. 17, p. 559,) appropriated the sum of money necessary to make the agreed payments from the date at which the steamship company was to furnish the stipulated ships and begin the carrying of the mails under the contract, namely, October 1, 1873, to the closing of the fiscal year ending June 30, 1874, being three hundred and sixty-five thousand dollars.

The steamship company did not furnish the ships, and did not begin the service required by the act of June 1, 1872, and the contract and their appropriation lapsed.

Since that time no appropriation has been made, and no action on the subject has been taken, by Congress, although one or two committees of each House reported on the subject, against annulling the contract.

It appears, however, that on the 8th of July, 1874, the company notified the Postmaster-General that two ships, the Tokio and Peking, were ready for inspection under the contract, (referred to as of August 23, 1873, on account of a clause in the section; see Letter of Postmaster-General, p. 39,) and on the 8th of August, 1874, the ships having been inspected, &c., at New York, and being then there, and not at San Francisco, the Postmaster-General, under advice of the Solicitor-General and Attorney-General, accepted the vessels.

Leaving out of view all questions respecting the means by which, and the influences under which, the act of June 1, 1872, and the contract may have been procured, and in respect to which no evidence is before us, and upon which we express no opinion, the question is whether the United States are bound in law to go on with the execution of the contract, notwithstanding the fact that the ships were not tendered for the service until nearly a year after the time required by the act of Congress and by the contract.

We are of opinion that this question must be answered in the negative.

1st. We think that in respect of executory contracts for the delivery or using movable things, or for service to be performed, the law is clear that the party claiming the benefit of the contract must tender performance not only in the manner but within the time stipulated, and failing to do this his right to demand performance ceases altogether.

The result is, that the Postmaster-General was, when the ships were tendered on the 8th of August, 1874, under no obligation to receive them, or to take any steps upon the subject.

2d. We are of opinion that the Postmaster-General had no lawful power or authority to accept the vessels under the circumstances, or to bind the United States in the premises.

The measure of the power of the executive officers of the Government is to be found in the acts of Congress, which declare what they

are to do, and how and when they are to do it. (Floyd acceptances, 7 Wall, 667.)

To hold that an executive officer of the Government, authorized by law to enter into a particular contract, may enter into another and different one, or dispense with performance of the one lawfully made, would be not only against the rules of law, but dangerous in the extreme to public interests.

The time at our disposal does not allow us to go into extensive reasoning or citation of authorities upon the subject.

GEO. F. EDMUNDS.
MATT. H. CARPENTER.
GEO. G. WRIGHT.
A. G. THURMAN.
J. W. STEVENSON.

APPENDIX.

POST-OFFICE DEPARTMENT,
Washington, D. C., February 17, 1875.

SIR: I have the honor to transmit herewith, in compliance with the request made in your letter of the 15th instant, copies of all papers, orders, contracts, and correspondence connected with the action of this Department under the act of Congress approved June 1, 1872, authorizing an additional monthly mail-service between San Francisco, Japan, and China.

Copies of sections 3 and 6 of the act of Congress, approved June 1, 1872, of the advertisement inviting proposals for the additional monthly service, of the proposal made by the Pacific Mail Steamship Company under said advertisement, of the contracts executed by said company, and of all the correspondence with this Department in relation to said contracts and service previous to the 3d of January, 1874, were transmitted by my predecessor, Postmaster-General Creswell, to Hon. J. B. Packer, chairman of Committee on the Post-Office and Post-Roads of the House of Representatives, on the 3d of January, 1874, and printed in House Miscellaneous Document No. 74, Forty-third Congress, first session, (copy inclosed herewith,) to which document I beg leave respectfully to refer.

I also transmit herewith copies of all papers, orders, and correspondence relating to said contract for the additional monthly service, of a subsequent date to January 3, 1874, comprising the opinion of the Attorney-General, dated August 3, 1874, respecting the validity of said contracts, and the obligation of this Department to cause the two new steamships tendered for the additional monthly service by said company to be inspected as required by the act of June 1, 1872, and to accept the same for the said service, if reported as fully meeting the requirements thereof; also the order of the Postmaster-General, dated August 3, 1874, accepting the steamships *City of Peking* and *City of Tokio* for the additional monthly service, to take effect on their arrival at San Francisco to commence said service; and recent orders of the Postmaster-General recognizing the service performed by extra steamers of said company at the amount of the sea-postage on the mail conveyed, under the provisions of the general law fixing the compensation to be allowed to steamships for the conveyance of the mails to foreign ports at the amount of postages on the mails conveyed.

I am, very respectfully, your obedient servant,

MARSHALL JEWELL,
Postmaster-General.

Hon. GEO. F. EDMUNDS,
Chairman of Judiciary Committee, United States Senate.

[House Mis. Doc. No. 74, 43d Congress, 1st session.]

CHINA MAIL-SERVICE.

Letter from the Postmaster-General to the Committee on the Post-Office and Post-Roads, inclosing a copy of all papers and correspondence relating to the additional monthly mail-service on the China line of steamers. January 16, 1874, recommitted to the Committee on the Post-Office and Post-Roads and ordered to be printed.

POST-OFFICE DEPARTMENT,
Washington, D. C., January 3, 1874.

SIR: In compliance with the resolution of your committee, a copy of which was inclosed in your letter of the 16th ultimo, I have the honor to transmit herewith copies of all papers and correspondence relating to the additional monthly mail-service on the China line, authorized by sections 3 and 6 of the act of Congress approved June 1, 1872, and comprising—

1st. A copy of sections 3 and 6 of the act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873, approved June 1, 1872;

2d. A copy of the advertisements issued by the Postmaster-General in accordance with the provisions of said sections, inviting proposals for the additional monthly mail-service to Japan and China;

3d. A copy of the proposal made by the Pacific Mail Steamship Company, under the said advertisement;

4th. Copies of the contracts executed by said company for the performance of the required additional monthly service; and

5th. Copies of all the correspondence with this Department in relation to said contract and service.

I am very respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

Hon. J. B. PACKER,
Chairman of Committee on the Post-Office and Post-Roads,
House of Representatives.

THE LAW UNDER WHICH THE CONTRACT WAS MADE.

Extract from "An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873," approved June 1, 1872. (U. S. Stat. at Large, vol. 17, pp. 201, 202.)

"SEC. 3. That the following sums, or so much thereof as may be necessary, be, and the same are hereby, appropriated for the year ending June thirty, eighteen hundred and seventy-three, out of any money in the Treasury not otherwise appropriated, namely: For steamship service between San Francisco, Japan, and China, five hundred thousand dollars; and the Postmaster-General is hereby authorized to contract with the lowest bidder, within three months after the passage of this act, after sixty days' public notice, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, for the conveyance of an additional monthly mail on the said route, at a compensation not to exceed the rate per voyage now paid under the existing contracts, and upon the same conditions and limitations as prescribed by existing

acts of Congress in reference thereto, and the respective contracts made in pursuance thereof; and the contractors, under the provisions of this section, shall be required to carry the United States mails, during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof: *Provided*, That all steamships hereafter accepted for said service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war, and before acceptance the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with: *Provided*, That in all cases the officers of the ships employed in the service herein provided for shall be citizens of the United States, and that persons of foreign birth, who have according to law declared their intention to become citizens of the United States, may be employed as though they were citizens within the meaning of this section, or of any act or acts specified in the act of June twenty-eight, eighteen hundred and sixty-four. And the Government of the United States shall have the right in case of war to take for the use of the United States any of the steamers of said line, and in such case pay a reasonable compensation therefor: *Provided*, The price paid shall in no case exceed the original cost of the vessel so taken; and this provision shall extend to and be applicable to the steamers of the Brazilian line hereinafter provided for."

"SEC. 6. That if the contract for the increase of the mail-service between San Francisco and China and Japan to a semi-monthly service shall be made with the Pacific Mail Steamship Company, or shall be performed in the said company's ships, or the ships of its successors in interest, the moneys payable under such contract shall be paid while the said company or its successors in interest shall maintain and run the line of steamships for the transportation of freight and passengers at present run between New York and San Francisco, via the Isthmus of Panama, by the said Pacific Mail Steamship Company, and no longer: *Provided*, That said requirement shall in all respects apply to any party contracting for the mail-service between San Francisco and China and Japan, as well as to the Pacific Mail Steamship Company."

ADVERTISEMENT INVITING PROPOSALS UNDER WHICH CONTRACT WAS MADE.

Proposals for mail-steamship service between San Francisco, Japan, and China.

POST-OFFICE DEPARTMENT,
Washington, June 5, 1872.

In accordance with the provisions of sections 3 and 6 of the act of Congress approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three," which sections are in the words and figures following, viz:

"SEC. 3. * * * * *
And the Postmaster-General is hereby authorized to contract with the lowest bidder, within three months after the passage of this act, after sixty days' public no-

tice, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, for the conveyance of an additional monthly mail on the said route, at a compensation not to exceed the rate per voyage now paid under the existing contracts, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof; and the contractors under the provisions of this section shall be required to carry the United States mails, during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof: *Provided*, That all steam ships hereafter accepted for said service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war, and before acceptance the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with: *Provided*, That in all cases the officers of the ships employed in the service herein provided for shall be citizens of the United States, and that persons of foreign birth, who have according to law declared their intention to become citizens of the United States, may be employed as though they were citizens within the meaning of this section, or of any act or acts specified in the act of June twenty-eighth, eighteen hundred and sixty-four. And the Government of the United States shall have the right in case of war to take for the use of the United States any of the steamers of said line, and in such case pay a reasonable compensation therefor: *Provided*, The price paid shall in no case exceed the original cost of the vessel so taken; and this provision shall extend to and be applicable to the steamers of the Brazilian line hereinafter provided for.

SEC. 6. That if the contract for the increase of the mail service between San Francisco and China and Japan to a semi-monthly service shall be made with the Pacific Mail Steamship Company, or shall be performed in the said company's ships, or the ships of its successors in interest, the moneys payable under such contract shall be paid while the said company or its successors in interest, shall maintain and run the line of steamships for the transportation of freight and passengers, at present run between New York and San Francisco, via the Isthmus of Panama, by the said Pacific Mail Steamship Company, and no longer: *Provided*, That said requirement shall in all respects apply to any party contracting for the mail-service between San Francisco and China and Japan, as well as to the Pacific Mail Steamship Company;

proposals will be received at the Post-Office Department in the city of Washington, until 3 o'clock p. m. on Monday, the 12th day of August, 1872, for conveying the mails of the United States by means of an additional monthly line of first-class American sea-going steamships, of not less than four thousand tons register each, and of sufficient number to perform twelve round trips per annum between the port of San Francisco and the port of Hong-Kong, (China,) touching at Yokohama, (Japan,) with a regular branch line, running in connection with the main line, between Yokohama and Shanghai, (China,) for a contract term of ten years from and after the 1st day of October, 1873.

Each bid should name the time proposed to be occupied in performing the passages each way, including stoppages at intermediate ports, and also the length of the stoppages at each of the intermediate ports. Schedules of sailing-days, stating the proposed days and hours of departure from each port, as well as the proposed days and hours of arrival, should also accompany each bid. The departures must be so arranged as to alternate at equal and regular intervals with those of the present monthly line during its continuance, forming a regular semi-monthly service in connection therewith; such schedules, however, to be subject to the approval of the Postmaster-General, and to adjustment or alteration by his order, from time to time, as the interests of the postal service may require.

The steamships offered for the service must be American-built steamships of the first class, in all respects conforming to the requirements of the laws authorizing the service, and before acceptance they will be subject to inspection and survey by an experienced naval constructor to be detailed for that purpose by the Secretary of the Navy.

Proposals must conform in all particulars to the provisions and requirements of the acts of Congress approved February 17, 1865, and February 18, 1867, and of sections 3 and 6 of the above-cited act of June 1, 1872, and must be properly guaranteed, with satisfactory testimonials that the bidder or bidders and their guarantors are men of property and abundantly able to make good their tender and guarantee.

The bidder or bidders must be an American citizen or citizens.

The bidder's name and residence, and the name of each member of the firm, when a partnership offers, should be distinctly stated. If made by a corporation the bid must be accompanied by a duly authenticated copy of the charter or articles of incorporation and a list of officers and directors.

All bids exceeding the sum of \$5,000 must be accompanied by a certified check or draft, payable to the order of the Postmaster-General, upon some solvent national bank, of not less than 5 per centum of the amount of one year's pay proposed in such bid or bids, such check or draft to be subject to all the conditions and provisions of existing laws in respect to forfeiture.

Any assignment or transfer of an ocean mail contract is expressly forbidden by law. Such assignments or transfers are null and void, and the Postmaster-General is required to determine any contract in case of its being underlet or assigned.

Proposals should be sent under seal to "The superintendent of foreign mails," with the words "mail-proposals," "Japan and China route," written on the face of the address; and they should be dispatched in time to be received at this Department on or before three o'clock p. m. of Monday the 12th day of August next, which will be the last day for receiving proposals under this advertisement.

JNO. A. J. CRESWELL,
Postmaster-General.

Letter of Pacific Mail Steamship Company to the Postmaster-General.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 10, 1872.

SIR: In submitting the bid of this company for carrying a semi-monthly mail between the ports of San Francisco and Hong-Kong via Yokohama, one of the sureties we offer, Mr. Henry Clews, banker of this city, was out of town when we went for his signature, he having consented to sign as one of the sureties. On his return to town we will obtain his signature to the contract if our bid is accepted, or will have it affixed to the bid we now make if you prefer it.

I am, very respectfully, yours,

PACIFIC MAIL S. S. CO.,
F. W. G. BELLOWES,
Vice-President.

Hon. J. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

Proposal of the Pacific Mail Steamship Company.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 10, 1872.

To the POSTMASTER-GENERAL, Washington, D. C. :

The Pacific Mail Steamship Company hereby propose to convey the mails of the United States between San Francisco and Hong-Kong, via Yokohama, with a regular connecting branch line between Yokohama and Shanghai, for ten years from and after the 1st day of October, 1873, for the sum of \$500,000 per annum, being at the rate of \$41,666.66 for each round voyage.

This bid is made, and said service is to be performed, in all respects in accordance with the provisions of the third and sixth sections of the Post-Office appropriation act, approved June 1, 1872, and the advertisement of the Postmaster-General, dated June 5, 1872, copy whereof is hereto annexed and made a part hereof.

The time to be occupied between San Francisco and Hong-Kong will not exceed thirty-two days in summer, and thirty-five in winter, including detention at Yokohama, which will not exceed two days on the outward and three days on the inward voyage.

The time between Yokohama and Shanghai will not exceed eight days, and the detention at Hioga and Nagasaki will not exceed twenty-four hours at each port.

The schedule to be arranged as follows :

Leave San Francisco	16th.
Arrive at Yokohama	Summer.... 9th.
Arrive at Yokohama	Winter.... 12th.
Leave Yokohama	Summer.... 11th.
Leave Yokohama	Winter.... 14th.
Arrive at Hong-Kong	Summer.... 18th.
Arrive at Hong-Kong	Winter.... 21st.
Leave Hong-Kong	27th.
Arrive at Yokohama	5th.
Leave Yokohama	8th.
Arrive at San Francisco	Summer.... 29th.
Arrive at San Francisco	Winter..... 2d.

Each of these dates, except those of departure from San Francisco and Hong-Kong, is varied by the number of days in the preceding month, and the length of the voyage will be considerably reduced when the new steamships hereinafter referred to are put in commission.

We are now building two iron propellers of about 4,500 tons register, capable of steaming 12 knots, and propose, as soon as practicable, with the limited facilities now available in America, to build two more steamers of like construction, but larger and of higher speed, all of which we shall offer for the service in question. Until they can be put into commission, and afterward, whenever circumstances may require us to relieve them temporarily, we propose to perform the service with one of the steamships heretofore accepted for the China mail-service, viz, America, Japan, China, Great Republic, Alaska, and Colorado, or, in case of need, with the Constitution, heretofore accepted as a spare steamer for said service.

The Pacific Mail Steamship Company being a corporation chartered by act of legislature of the State of New York, a certified copy of the charter and amendments is hereto annexed.

The officers of the company are as follows: A. B. Stockwell, president; F. W. G. Bellows, vice-president; Theodore T. Johnson, secretary; and the directors are Messrs. A. B. Stockwell, James D. Smith, H. H. Baxter, Frederick Billings, Alexander Masterton, Henry Clews, George L. Kingsland, R. G. Rolston, and F. W. G. Bellows.

A certified check for \$25,000 is herewith inclosed.

Yours, respectfully,

PACIFIC MAIL S. S. CO.,
A. B. STOCKWELL,
President.

We hereby guarantee the faithful performance of any contract that may be awarded the Pacific Mail Steamship Company under the above bid.
ALDEN B. STOCKWELL.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 10, 1872.

DEAR SIR: We are well acquainted with the Pacific Mail Steamship Company, and with Messrs. A. B. Stockwell and Henry Clews, and are satisfied that they are abundantly able to make good any tender and guarantee they may offer you for carrying the mails to China under your advertisement of June 5, 1872.

C. A. ARTHUR,
Collector of Customs, Port and District of New York.
THO. HILLHOUSE,
Assistant Treasurer United States.
B. F. MORGAN,
Assistant Postmaster, New York.

Hon. J. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 10, 1872.

DEAR SIR: I have the honor to inclose herein proposals for carrying the mails between California and China under your advertisement of June 5, 1872.

Should you accept these proposals, we will begin the service immediately, with the understanding that should Congress at its next session make an additional appropriation for the China mail-service for the current and succeeding fiscal years sufficient to pay for the additional service, then said service shall be considered, and shall be paid for, as having been begun on the 1st day of July, 1872, and shall continue for ten years from and after that date; otherwise the service shall be considered as beginning on the 1st of October, 1873, the date fixed by the act of June 1, 1872, and in this event we shall be at liberty to discontinue the additional service at any time prior to the 1st of October, 1873, and as

a matter of fact shall unquestionably discontinue it after the departure of December 16, 1872, or January 16, 1873.

You will note that the amount of money to be paid by the United States and received by us is not increased by this proposition, nor is the contract altered in any respect save that the date of beginning is changed from October 1, 1873, to July 1, 1872, thereby securing the public against the interruption of the valuable extra service we are now performing, which will otherwise be continued only during the tea season.

Please observe, also, that the proposals herewith inclosed are in no wise dependent upon your acceptance or rejection of the supplementary and independent proposition submitted in this letter, which I should, however, be glad if you would consider favorably, after acting upon the regular bid inclosed. If you think it for the public interest to accept the supplementary offer, we would also hope that you would include in your estimates the amounts necessary to be appropriated to carry out the understanding, if Congress sees fit to confirm it by making such appropriation.

To guard against possible misapprehension at any time, I will state explicitly that your acceptance of this supplementary offer will in no case give the company any claim against the United States, unless Congress should sanction the change of date in the manner proposed.

Very respectfully, yours,

PACIFIC MAIL STEAMSHIP CO.,
A. B. STOCKWELL, *President.*

Hon. J. A. J. CRESWELL,
Postmaster-General.

Charter of the Pacific Mail Steamship Company, with its amendments, up to May 11, 1872.

AN ACT to incorporate the Pacific Mail Steamship Company, passed April 12, 1848.

The people of the State of New York, represented in the senate and assembly, do enact as follows:

SECTION 1. Gardiner G. Howland, Henry Chauncey, and William H. Aspinwall, of the city of New York, and their associates, and all other persons who are, or may hereafter be, holders of the stock hereinafter mentioned, are hereby constituted a body corporate, by the name of the Pacific Mail Steamship Company, and so to remain and continue for twenty years next ensuing, for the purpose of building, equipping, furnishing, fitting, purchasing, chartering, and owning vessels, to be propelled solely or partially by the power or aid of steam, or other expansive fluid or motive-power, and to be run and propelled in navigating the Pacific Ocean; and also purchasing, owning, and navigating such auxiliary sailing-vessels as may be necessary to provide fuel or other necessities; and for such purpose all the necessary and incidental power is hereby granted to said corporation; and all contracts may be either verbal or under the signature of the president and secretary of said company, and with or without the corporate seal.

SEC. 2. The capital stock of said corporation shall be five hundred thousand dollars, and is to be divided into shares of one thousand dol-

lars each. The corporation may commence operations when three hundred thousand dollars shall have been subscribed and the sum of five per cent. on the amount of each share subscribed for paid in, with liberty of increasing the capital five hundred thousand dollars.

SEC. 3. Gardiner G. Howland, Henry Chauncey, and William H. Aspinwall shall be commissioners to receive subscriptions for such capital stock at such times and places, in the city of New York, as they shall appoint, by giving ten days' public notice thereof in one or more newspapers published in the city of New York; and if the whole capital stock shall not be subscribed for at the times and places so appointed, other subscriptions may be at any time received, until the whole capital stock shall have been subscribed under such regulations as the board of directors of the corporation shall adopt.

SEC. 4. As soon as three hundred thousand dollars shall have been subscribed, the said commissioners shall call a meeting of the stockholders by giving ten days' public notice thereof in one or more newspapers published in the city of New York; and said stockholders shall elect by ballot at such meeting, or at any subsequent general meeting, five directors, being stockholders and citizens of this State, to hold their office for one year, to manage and conduct the affairs, concerns, and business of the corporation. Each stockholder at such election shall be entitled to one vote for each share he shall hold at the time of such election, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy; and the directors of the said corporation, except for the first years, shall be annually elected at such time and place as shall be directed by the by-laws of said corporation.

SEC. 5. Any three directors of said corporation shall form a quorum for the transaction of all the business of said corporation.

SEC. 6. It shall be lawful for the directors of the corporation to call in, and demand from the stockholders respectively, all such sums of money by them subscribed for, at such times and in such payments or installments as the directors shall deem proper, under the penalty of forfeiting the shares of stock subscribed for, and all previous payments made thereon, if payments shall not be made by the stockholders within sixty days after personal demand, or notice requiring such payment shall have been published for six successive weeks in one or more newspapers published in the city of New York.

SEC. 7. Said corporation may have and use a common seal, and the stock of said corporation shall be deemed personal estate, and shall be transferable in such a manner as shall be prescribed by its by-laws.

SEC. 8. The directors of the corporation, who from time to time may be duly elected, may appoint one of their number to be president, and such other officers and agents, and establish such by-laws and regulations as they may think proper and expedient for the government of the corporation and the management of their business, so that such by-laws and regulations shall not conflict with nor in any manner violate the constitution or laws of this State, or of the United States.

SEC. 9. The stockholders of the said corporation shall be, jointly and severally, individually liable for all the debts that may be due and owing to all their laborers and operatives for service performed for said corporation.

SEC. 10. The stockholders of said corporation shall be severally individually liable to the creditors of said corporation, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by said corporation, until the amount of the capital stock of

said corporation shall have been paid in, and a certificate thereof shall have been made and recorded as prescribed in the following section.

SEC. 11. The president and a majority of the directors of the corporation, within thirty days after the payment of the last installment of the capital stock of the said corporation, shall make a certificate, stating the amount of the capital stock of the corporation, and that the same is paid in, which certificate shall be signed and sworn to by a majority of the directors, and they shall, within the said thirty days, record the same in the office of the clerk of the city and county of New York.

SEC. 12. But no stockholders shall be personally liable for the payment of any debt contracted by the said corporation which is not to be paid within one year from the time the debt is contracted, nor unless a suit for the collection of such debt shall be brought against said corporation within one year after the debt shall become due; and no suit shall be brought against any stockholder in said corporation for any debt so contracted, unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in said corporation, nor until an execution against the corporation shall have been returned unsatisfied in whole or in part.

SEC. 13. It shall be the duty of the said corporation to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons who are, or shall within two years have been, stockholders in said corporation, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; which book shall, at all reasonable times, be open for the inspection of the creditors and stockholders of the said corporation, at the office or principal place of business of said corporation.

SEC. 14. The said corporation shall possess the general powers and privileges, and be subject to the general restrictions and liabilities, prescribed in the third title of the eighteenth chapter of the first part of the revised statutes, and by the several acts amendatory thereof.

SEC. 15. The legislature may at any time alter or repeal this act.

SEC. 16. This act shall take effect immediately.

STATE OF NEW YORK,

Secretary's Office :

I have compared the preceding with an original law on file in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original.

ARCH'D CAMPBELL,
Deputy Secretary of State.

ALBANY, April 24, 1848.

AN ACT to amend an act entitled "An act to incorporate the Pacific Mail Steamship Company," passed April 12, 1848.—Passed April 8, 1850.

The people of the State of New York, represented in the senate and assembly, do enact as follows :

SECTION 1. It shall be lawful for the Pacific Mail Steamship Company, in addition to its present powers and privileges, to build, equip, furnish, fit, purchase, charter, and own vessels, to be propelled solely or partially by the power or aid of steam, or other expansive fluid or motive-power, and to be run and propelled in navigating the Atlantic Ocean.

SEC. 2. It shall be lawful for the said corporation, at any time hereafter, to increase its capital stock to any sum not exceeding two millions of dollars.

SEC. 3. This act shall take effect immediately.

STATE OF NEW YORK,

Secretary's Office :

I have compared the preceding with an original, now on file in this office, and do certify that the same is a correct transcript therefrom, and of the whole of said original.

Given under my hand and seal of office this 11th day of April, 1850.

[L. S.]

A. G. JOHNSON,
Deputy Secretary of State.

AN ACT to amend an act entitled "An act to incorporate the Pacific Mail Steamship Company," passed April 12, 1843.—Passed April 5, 1853.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. It shall be lawful for the Pacific Mail Steamship Company, at any time hereafter, to increase their capital stock to any sum not exceeding four millions of dollars.

SEC. 2. This act shall take effect immediately.

STATE OF NEW YORK,

Secretary's Office :

I have compared the preceding with the original law, on file in this office, and hereby certify the same to be a correct transcript therefrom, and of the whole of said original.

Given under my hand and seal of office, at the city of Albany, this thirteenth day of April, eighteen hundred and fifty-three.

[L. S.]

ARCH'D CAMPBELL,
Deputy Secretary of State.

AN ACT to amend an act entitled "An act to incorporate the Pacific Mail Steamship Company," passed April 12, 1843.—Passed February 14, 1856.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. It shall be lawful for the Pacific Mail Steamship Company to divide its capital into shares of one hundred dollars each.

SEC. 2. It shall be lawful for said corporation to increase the number of directors thereof to nine.

SEC. 3. This act shall take effect immediately.

STATE OF NEW YORK,

Secretary's Office :

I have compared the preceding with the original law on file in this office, and do certify the same to be a correct transcript therefrom, and of the whole of said original.

Given under my hand and seal of office, at the city of Albany, this
fourteenth day of February, one thousand eight hundred and fifty-six.
[L. S.] N. P. STANTON, JR.,

Deputy Secretary of State.

AN ACT to increase the capital stock and to extend the charter of the Pacific Mail
Steamship Company. Passed May 15, 1865, three-fifths being present.

The people of the State of New York, represented in senate and
assembly, do enact as follows :

SECTION 1. Section one of chapter one hundred and twenty-seven of
the laws of eighteen hundred and fifty-three is hereby amended so as to
read as follows :

"§ 1. It shall be lawful for the Pacific Mail Steamship Company, at
any time hereafter, to increase their capital stock to any sum not exceed-
ing ten millions of dollars.

"§ 2. The charter of the Pacific Mail Steamship Company is hereby
extended twenty years from April twelfth, eighteen hundred and sixty-
eight.

"§ 3. This act shall take effect immediately."

STATE OF NEW YORK,

Office of the Secretary of State :

I have compared the preceding with the original law on file in this
office, and do hereby certify that the same is a correct transcript there-
from, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this
seventeenth day of May, in the year one thousand eight hundred and
sixty-five.

[L. S.]

CHAUNCEY M. DEPEW,
Secretary of State.

CHAPTER 869.

AN ACT to increase the capital stock of the Pacific Mail Steamship Company. Passed
May 1, 1866.

The people of the State of New York, represented in senate and
assembly, do enact as follows :

SECTION 1. Section one of chapter one hundred and twenty-seven of
the laws of eighteen hundred and fifty-three, and section one of chap-
ter seven hundred and fifty-three of the laws of eighteen hundred and
sixty-five, are hereby amended so as to read as follows :

"§ 1. It shall be lawful for the Pacific Mail Steamship Company, at
any time hereafter, to increase their capital stock to any sum not exceed-
ing twenty millions of dollars.

"§ 2. This act shall take effect immediately."

STATE OF NEW YORK,

Office of the Secretary of State :

I have compared the preceding with the original law on file in this
office, and do hereby certify that the same is a correct transcript there-
from, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this second day of May, in the year one thousand eight hundred and sixty-six.

[L. S.]

FRANCIS C. BARLOW,
Secretary of State.

CHAPTER 634.

AN ACT relating to the Pacific Mail Steamship Company, authorizing the reduction of its capital stock, and prescribing the qualification of directors. Passed May 11, 1872.

The people of the State of New York, represented in senate and assembly, do enact as follows :

SECTION 1. The Pacific Mail Steamship Company is hereby authorized to reduce its capital stock to ten millions of dollars, upon first obtaining the written consent of stockholders owning two-thirds of said capital stock, and to that end may buy in, cancel, and extinguish its shares, so far as the same can be purchased at prices not exceeding the par value thereof; and the shares so purchased shall be retired and extinguished in reduction of the capital stock of the company, and shall not be issued again.

SEC. 2. Any citizen of the United States who is a stockholder of the company, in his own right, shall be qualified, when duly elected, to act as a director of said company; but a majority of the directors shall be citizens of the United States.

SEC. 3. This act shall take effect immediately.

STATE OF NEW YORK,

Office of the Secretary of State, ss :

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office, at the city of Albany, this eleventh day of May, in the year one thousand eight hundred and seventy-two.

[L. S.]

ANSON S. WOOD,
Deputy Secretary of State.

The Superintendent of Foreign Mails to the President of the Pacific Mail Steamship Company.

No. 27533.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., August 16, 1872.

SIR: I am directed by the Postmaster-General to inform you that he has this day accepted the proposal of your company, dated the 10th of August, instant, for the mail-steamship service between San Francisco and Hong-Kong, via Yokohama, with a regular branch line between Yokohama and Shanghai, authorized by sections 3 and 6 of the act of

S. Rep. 674—2

Congress approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873," and advertised by this Department under date of June 5, 1872. A contract for the designated service, containing the required stipulations, will be drawn up in due time and transmitted to your company for execution.

I am, very respectfully, your obedient servant,
JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

ALDEN B. STOCKWELL, Esq.,
President of the Pacific Mail Steamship Company,
59 and 61 Wall Street, New York, N. Y.

P. S.—It is proper to call your attention to the circumstance that the signature of Mr. Henry Clews, one of the proposed guarantors, to the proposal of your company, is not attached, which omission Captain Phelps, when here, promised should be supplied by the transmission of a duplicate paper properly signed by both guarantors.

J. H. B.

The Vice-President of the Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 17, 1872.

SIR: We have the honor to acknowledge the receipt of your letter No. 27533, informing us that the Postmaster-General has accepted the proposals of this company, of 10th instant, for mail steamship service between San Francisco and Hong-Kong, via Yokohama, and thence by regular branch-line to Shanghai, under sections 3 and 6 of the act of Congress approved 1st June, 1872, and advertised by the Department 5th June, 1872.

Our agent, Mr. Charles Abert, will fulfill the further requirements of the Department as to guarantors on the 19th instant.

Awaiting from the Department the contracts containing the required stipulations for execution, we trust that the fulfillment of the entire terms thereof by the company, both in letter and spirit, may fully justify the confidence of the Postmaster-General and the Department.

I am, very respectfully, your obedient servant,
For PACIFIC MAIL STEAMSHIP CO.,
F. W. G. BELLows, Vice-President.

Hon. JOSEPH H. BLACKFAN,
Superintendent Post-Office Department,
Office Foreign Mails, Washington, D. C.

Mr. Charles Abert, for Pacific Mail Steamship Company, to the Postmaster-General.

WASHINGTON, D. C., August 19, 1872.

SIR: I am directed by the Pacific Mail Steamship Company to present the accompanying duplicate original proposal for conveyance of the United States mails between San Francisco and Hong-Kong, via

Yokohama and Shanghai, with the guarantee complete, and request that it may be filed with the proposal, which was duly presented and accepted.

Very respectfully, yours,

CHARLES ABERT.

Hon. J. A. J. CRESWELL,
Postmaster-General.

Duplicate original proposal referred to in the foregoing letter of Mr. Charles Abert.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 10, 1872.

To the POSTMASTER-GENERAL, Washington, D. C.:

The Pacific Mail Steamship Company hereby propose to convey the mails of the United States between San Francisco and Hong-Kong, via Yokohama, with a regular connecting branch-line between Yokohama and Shanghai, for ten years from and after the 1st day of October, 1873, for the sum of \$500,000 per annum, being at the rate of \$41,666.66 for each round voyage. This bid is made and said service is to be performed in all respects in accordance with the provisions of the third and sixth sections of the Post-Office appropriation act, approved June 1, 1872, and the advertisement of the Postmaster-General dated June 5, 1872, copy whereof is hereto annexed and made a part hereof.

The time to be occupied between San Francisco and Hong-Kong will not exceed thirty-two days in summer and thirty-five days in winter, including detention at Yokohama, which will not exceed two days on the outward and three days on the inward voyage.

The time between Yokohama and Shanghai will not exceed eight days, and the detention at Hiogo and Nagasaki will not exceed twenty-four hours at each port.

The schedule to be arranged as follows :

Leave San Francisco	16th
Arrive at Yokohama, summer	9th
Arrive at Yokohama, winter	12th
Leave Yokohama, summer	11th
Leave Yokohama, winter	14th
Arrive at Hong-Kong, summer	18th
Arrive at Hong-Kong, winter	21st
Leave Hong-Kong	27th
Arrive at Yokohama	5th
Leave Yokohama	8th
Arrive at San Francisco, summer	29th
Arrive at San Francisco, winter	2d

Each of these dates, except those of departure from San Francisco and Hong-Kong, is varied by the number of days in the preceding month, and the length of the voyage will be considerably reduced when the new steamships, hereinafter referred to, are put in commission.

We are now building two iron propellers of about 4,500 tons register, capable of steaming 12 knots, and propose, as soon as practicable with the limited facilities now available in America, to build two more steamers of like construction, but larger and of higher speed; all of which we shall offer for the service in question. Until they can be put into

commission, and afterward, whenever circumstances may require us to relieve them temporarily, we propose to perform the service with one of the steamships heretofore accepted for the China mail-service, viz, America, Japan, China, Great Republic, Alaska, and Colorado, or, in case of need, with the Constitution, heretofore accepted as a spare steamer for said service.

The Pacific Mail Steamship Company being a corporation chartered by act of legislature of the State of New York, a certified copy of the charter and amendments is hereunto annexed.

The officers of the company are as follows: A. B. Stockwell, president; F. W. G. Bellows, vice-president; Theodore T. Johnson, secretary; and the directors are Messrs. A. B. Stockwell, James D. Smith, H. H. Baxter, Frederick Billings, Alexander Masterton, Henry Clews, George L. Kingsland, R. G. Ralston, and F. W. G. Bellows.

A certified check for \$25,000 is herewith inclosed.

Yours, respectfully,

PACIFIC MAIL STEAMSHIP COMPANY,
A. B. STOCKWELL, *President.*

We hereby guarantee the faithful performance of any contract that may be awarded the Pacific Mail Steamship Company under the above bid.

ALDEN B. STOCKWELL.
HENRY CLEWS.

The Postmaster-General to the president of the Pacific Mail Steamship Company.

No. 27560.]

POST-OFFICE DEPARTMENT,
Washington, D. C., August 21, 1872.

SIR: I transmit herewith for execution by your company and return to this Department a draught of a contract, in the usual form, for the conveyance of an additional monthly mail on the steamship-route between San Francisco, Japan, and China, authorized by sections 3 and 6 of the act of Congress approved June 1, 1872, entitled, "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three," which I have caused to be drawn up in conformity with the provisions and requirements of said act, and of the accepted proposal of your company, made under the advertisement issued by this Department on the 5th of June, 1872.

As the time within which the Postmaster-General is authorized to contract for this service is expressly limited to three months after the passage of the said act, it is essential that the contract shall be executed on or before the 31st instant, and I therefore request that it be signed with as little delay as practicable.

After its execution by the company and its return to this Department, it will be signed by me, and a certified copy thereof forwarded to your company.

I am, very respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

A. B. STOCKWELL, Esq.,

President of Pacific Mail Steamship Company,

59 and 61 Wall Street, New York

Contract referred to in the foregoing letter.

This article of contract, made the 29th day of August, in the year of our Lord one thousand eight hundred and seventy-two, between the United States of America (acting in this behalf by their Postmaster-General) and the Pacific Mail Steamship Company, with Alden B. Stockwell and Henry Clews of New York City as sureties, witnesseth:

That whereas the said Pacific Mail Steamship Company have been accepted, in accordance with the stipulations and provisions of sections 3 and 6 of the act of Congress approved June 1, 1872, entitled, "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three," and in conformity with the advertisement inviting proposals for said service, issued by the Postmaster-General of the United States on the 5th of June, 1872, as contractors for the conveyance of an additional monthly mail on the mail-steamship route between the port of San Francisco and the port of Hong-Kong, (China,) via Yokohama, (Japan,) with a regular branch line running in connection with the main line between Yokohama and Shanghai, (China,) at the sum of five hundred thousand dollars, for the performance of twelve round trips per annum, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof.

Now, therefore, the said Pacific Mail Steamship Company, contractors, and Alden B. Stockwell and Henry Clews as sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves, to transport the mails of the United States between the ports of San Francisco and Hong-Kong, in China, touching at Yokohama (Japan) both on the outward and inward passages, to land and receive mails, with a regular connecting branch line of steamers between Yokohama and Shanghai, (China,) twelve round trips per annum by an additional monthly line of first-class American steamships, to conform in all respects to the requirements and provisions of the third section of the act of Congress above cited, approved June 1, 1872, and the advertisement of the Postmaster-General issued in accordance therewith, dated June 5, 1872, and of sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the first of October, eighteen hundred and seventy-three. And the said contractors do further covenant and agree with the United States, and do bind themselves, that the steamships hereafter offered for the service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, of the best materials and after approved models, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war; and before acceptance, the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with; and further, that the said steamships, after acceptance by the Postmaster-General, and during the period they may be employed in conveying the mails, shall be kept up by alterations, repairs, and additions, as the exigency may require, fully equal to the best state of steamship improvement attained; and, if not so kept up and maintained, they may

be rejected by the Postmaster-General of the United States as not meeting the requirements of the act of Congress authorizing the additional monthly service, and other satisfactory steamships required in their place. And the said contractors do further covenant and agree, and do bind themselves, to carry the United States mails during the existence of their contracts, without additional charge, on all the steamers they may run upon said line or any part of it, or any branch or extension thereof; and they do further covenant and agree to transport, free of expense, on each and every steamer, a mail-agent of the United States, to take charge of and arrange the mail-matter, and to assign to such agent a separate state-room on the upper or main deck, with suitable accommodations for that purpose; and it is further covenanted and agreed by the said contractors, and they do bind themselves—

▼ First. To dispatch an additional steamship from San Francisco on the sixteenth day of each month, and from Hong-Kong on the twenty-seventh of each month, or upon such other days as may be hereafter selected, with the approval of the Postmaster-General; the departures to be always so arranged as to alternate at equal and regular intervals with those of the present monthly line during its continuance, and to form in connection therewith a regular semi-monthly mail-service between San Francisco and Hong-Kong via Yokohama.

Second. That the time occupied in making each passage between San Francisco and Hong-Kong shall not exceed thirty-two days in summer and thirty-five days in winter, including detention at Yokohama, which is not to exceed two days on the outward and three days on the inward voyage; and the time occupied in making each passage on the branch line between Yokohama and Shanghai shall not exceed eight days, including detention at Hiogo and Nagasaki, which is not to exceed twenty-four hours at each port; and, further, to perform the service in conformity with such schedule of days and hours of departures and arrivals as shall be approved by the Postmaster-General of the United States.

Third. To transport the mails in a safe and secure manner, free from wet or other injury, in a separate apartment in each steamship, to be fitted up for the exclusive accommodation of the mail.

Fourth. To take the mail and every part of it from, and deliver it and every part of it into, the post-offices at San Francisco and Hong-Kong, and the offices of the United States postal agents at Shanghai, (China,) Yokohama, (Japan,) and other Japanese ports of call. They also undertake, covenant, and agree with the United States, and do bind themselves, to be answerable for the proper care and transportation of the mails, and accountable to the United States for any damages which may be sustained by the United States through the unfaithfulness or want of care of their officers, agents, and employes; and they do further covenant and agree that they will not transmit, by themselves or their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry or suffer to be carried letters or newspapers out of the mail, and they will not, knowingly, convey any person carrying on the business of transporting letters or other mail-matter, without the special consent of the Post-Office Department of the United States. And, further, that they will convey, without additional charge, post-office blanks, mail-bags, and the occasional special agent, on business of the Post-Office Department exclusively, on the exhibition of his credentials. For which services, when performed, the said Pacific Mail Steamship Company are to be paid by the United

States the sum of five hundred thousand dollars per annum, (being at the rate of forty-one thousand six hundred and sixty-six dollars and sixty-six cents for each round voyage,) in the currency of the United States, in quarterly payments, on the receipt at the Post-Office Department of satisfactory evidence of the performance of the round voyages embraced in said payments, provided that the moneys payable under this contract shall be paid while the said Pacific Mail Steamship Company, or its successors in interest, shall maintain and run the line of steamships for the transportation of freight and passengers at present run between New York and San Francisco, via the Isthmus of Panama, by the said Pacific Mail Steamship Company, and no longer; said payments, however, to be subject to deductions, fines, and penalties imposed by the Postmaster-General for failures and irregularities as hereinafter stipulated. It is hereby also stipulated and agreed by the said contractors and their sureties, that, in case of failure from any cause to perform any of the regular monthly voyages stipulated for in this contract, a *pro-rata* deduction shall be made from the compensation on account of such omitted voyage or voyages. And it is further stipulated and agreed that suitable fines and penalties shall be imposed, in the discretion of the Postmaster-General, for delays and irregularities in the performance of the service. If delays occur in the arrivals of the steamers according to schedule, the company will be fined in a sum not exceeding two thousand dollars for every forty-eight hours; and should delays occur in their departure, a fine will be imposed not exceeding one thousand dollars for every twenty-four hours, except in cases of unforeseen and uncontrollable events; and suitable fines shall also be imposed, unless the delinquency shall be satisfactorily explained to the Postmaster-General, in due time, for failure to take or deliver the mail or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury by being wet, or otherwise; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mails; or for transmitting knowingly, or after being informed, any one engaged in transporting letters or mail-matter in violation of the laws of the United States.

And it is hereby further stipulated and agreed that the Postmaster-General shall have the power to determine this contract at any time, in case of its being underlet or assigned to any other party, and that he may annul the contract for repeated failures, for violating the post-office laws of the United States, for disobeying the instructions of the Department, or for transporting persons conveying mail-matter out of the mails as aforesaid; and that this contract shall, in all its parts, be subject to, and in all respects governed by, the requirements and provisions of the third and sixth sections of the act of Congress approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy-three," and also of the act of Congress approved the 21st of April, 1808, entitled "An act concerning public contracts," so far as the provisions of the act last cited shall apply thereto; and it is hereby further stipulated and agreed that this contract may at any time be terminated by Congress.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be affixed hereto, and has attested the same by his signature; and the said, the Pacific Mail Steamship Com-

pany, by Alden B. Stockwell, president, and their sureties, have hereto set their hands and seals the day and year first hereinbefore written.

JNO. A. J. CRESWELL, [SEAL.]
Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General, in presence of—

JOSEPH H. BLACKFAN.

PACIFIC MAIL STEAMSHIP CO., [SEAL.]
By A. B. STOCKWELL, *President*.

Witness: ALFRED R. REEVES.

A. B. STOCKWELL. [SEAL.]

Attest: THEODORE T. JOHNSON, *Secretary*.

HENRY CLEWS. [SEAL.]

Signed, sealed, and delivered by the Pacific Mail Steamship Company, by Alden B. Stockwell, president, and signed by Alden B. Stockwell and Henry Clews, in presence of—

F. W. G. BELLWS.

POST-OFFICE,
New York, August 29, 1872.

The undersigned, postmaster at New York, State of New York, certifies, under his oath of office, that he is acquainted with the above guarantors, and knows them to be men of property and able to make good their guarantee.

P. H. JONES,
Postmaster.

The Postmaster-General to the President of the Pacific Mail Steamship Company.

No. 27561.]

POST-OFFICE DEPARTMENT,
Washington, D. C., August 22, 1872.

SIR: I have to inform you, with regard to the supplementary and independent proposition submitted in your letter of the 10th instant, accompanying your company's proposal for the conveyance of an additional monthly mail on the route between San Francisco, Japan, and China, authorized by the third and sixth sections of the act of Congress approved June 1, 1872, that as the date of commencement and the duration of said service are expressly prescribed in the act, which provides that the contract shall be "for a term of ten years, from and after the first day of October, eighteen hundred and seventy-three," I have no authority, as a Postmaster-General, to make such an arrangement as you propose, or to assent to any understanding, conditional upon the approval of Congress, that the additional service in question shall commence at an earlier date than that fixed by the act authorizing the service, or in any respect to anticipate future legislation by Congress.

I am, very respectfully, your obedient servant,

JNO. A. J. CRESWELL,
Postmaster-General.

A. B. STOCKWELL, Esq.,
President of Pacific Mail Steamship Company,
59 and 61 Wall street, New York City.

Telegram from Vice-President of Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

NEW YORK, August 27, 1872.

To JOS. H. BLACKFAN, P. O. D.:

Will return contract soon as Mr. Stockwell comes to town. Expect him to-morrow.

F. W. G. BELLOWS.

Telegram from President of Pacific Mail Steamship Company to Superintendent of Foreign Mails.

NEW YORK, August 29, 1872.

To JOS. H. BLACKFAN:

Will Postmaster-General be in Washington to-morrow morning? Contract will be there then. Answer.

A. B. STOCKWELL,
President.

Telegram from Superintendent of Foreign Mails to the President of Pacific Mail Steamship Company.

No. 27609.]

WASHINGTON, D. C., August 29, 1872.

To A. B. STOCKWELL,

President Pacific Mail Steamship Company,
59 and 61 Wall Street, New York City:

The Postmaster-General will be in Washington to-morrow.

JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

The Vice-President of Pacific Mail Steamship Company to the Postmaster-General.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 29, 1872.

SIR: I have the honor to acknowledge the receipt of your letter No. 27560, transmitting a copy of contract for execution, for additional monthly mail-service to Japan and China, as authorized by act of Congress, approved 1st June, 1872. The said contract has been executed according to the requirements of the Department, and will be delivered to you in person by this company's agent, Chas. Abert, esq., on the 30th instant.

We will thank you for a certified copy thereof, as early as practicable.

Very respectfully, your obedient servant,

PACIFIC MAIL STEAMSHIP CO.,
By F. W. G. BELLOWS, Vice-President.

Hon. JNO. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

The Vice-President of Pacific Mail Steamship Company to the Postmaster-General.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, 29th August, 1872.

SIR: I have the honor to own the receipt of your letter No. 27561, and note with entire deference your decision in regard to the independent proposition for the beginning of the term of additional China mail-service, provided for in the act of Congress of 1st June, 1872.

We beg to advise the Department that we shall continue our line of extra steamers, inaugurated 16th May, 1872, on the 16th of each month from San Francisco, and 27th from Hong-Kong, until, at least, the close of 1872, receiving and delivering all United States mails intrusted to our charge.

Very respectfully, your obedient servant,

PACIFIC MAIL STEAMSHIP CO.,
By F. W. G. BELLows, *Vice-President.*

Hon. JNO. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

The Superintendent of Foreign Mails to the Vice-President of Pacific Mail Steamship Company.

No. 27612.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILs,
Washington, D. C., August 31, 1872.

SIR: In compliance with the request made in your letter of the 29th instant, I transmit herewith a certified copy of the contract executed with the Pacific Mail Steamship Company for the conveyance of an additional monthly mail on the mail steamship route between San Francisco and Hong-Kong, (China,) via Yokohama, (Japan,) with a branch-line running, in connection with the main line, between Yokohama and Shanghai, China.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

F. W. G. BELLows, Esq.,
Vice-President Pacific Mail Steamship Company,
59 and 61 Wall Street, New York, N. Y.

The Vice-President of the Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, September 2, 1872.

SIR: I have the honor to acknowledge the receipt of your communication, No. 27612, transmitting a certified copy of the contract for the conveyance of an additional monthly mail between the United States,

China, and Japan, according to the act of Congress approved 1st June, 1872, for which please accept our thanks.

Very respectfully, your obedient servant,

PACIFIC MAIL STEAMSHIP CO.,
By F. W. G. BELLOWES, *Vice-President.*

Hon. JOSEPH H. BLACKFAN,
*Superintendent Post-Office Department,
Office Foreign Mails, Washington, D. C.*

The Superintendent of Foreign Mails to the President of Pacific Mail Steamship Company.

No. 27642.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., September 5, 1872.

SIR: The contract with your company for an additional monthly mail between San Francisco and Hong-Kong, China, via Kanagawa, Japan, having been executed under date of 29th August ultimo, I return herewith, by direction of the Postmaster-General, the certified check for \$25,000, which accompanied your proposal of the 10th August, 1872. Please acknowledge receipt.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

A. B. STOCKWELL, Esq.,
*President Pacific Mail Steamship Company,
59 and 61 Wall Street, New York.*

The Vice-President of Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
New York, September 6, 1872.

SIR: Yours of yesterday's date at hand this morning, under cover of which we received the return of our certified check for \$25,000, for which we thank you.

Yours, very respectfully,

F. W. G. BELLOWES,
Vice-President.

JOS. H. BLACKFAN, Esq.,
*Superintendent Foreign Mails,
Post-Office Department, Washington, D. C.*

Henry Clews, Esq., to the Postmaster-General.

BANKING-HOUSE OF HENRY CLEWS & Co.,
32 Wall Street, New York, June 2, 1873.

DEAR SIR: While a director of the Pacific Mail Steamship Company, the additional contract for China mail-service was concluded with them, upon which I became surety.

My connection with the company having now ceased, I wish to have my name as surety withdrawn, and that of some new director inserted instead, who shall be satisfactory to the Government. Asking your early attention to the matter,

I am, yours, very truly,

HENRY CLEWS.

Hon. J. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

The Superintendent of Foreign Mails to Henry Clews, esq.

No. 29465.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., June 4, 1873.

SIR: I am directed by the Postmaster-General to acknowledge the receipt of your letter of the 2d instant, informing him of your wish to withdraw your name as surety under the contract with the Pacific Mail Steamship Company for the China mail-service, and to inform you, in reply, that it is necessary that a new surety for substitution in your place shall be presented, with the concurrence of the company, before he can take action on that subject.

Section 255 of the act of June 8, 1872, provides "that the Postmaster-General, whenever he may deem it consistent with the public interest, may accept new surety upon any contract existing or hereafter made for carrying the mails, in substitution for and release of any existing surety."

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

HENRY CLEWS, Esq.,
32 Wall Street, New York City.

Telegram from W. H. Painter to Superintendent of Foreign Mails.

NEW YORK, July 26, 1873.

J. H. BLACKFAN, Esq.,
Foreign Mail Department, Post-Office Department :

Please mail me to-day, care J. C. Reiff, K. P. R. R., 80 Broadway, New York, two copies law of '72, authorizing additional subsidy to Japan and contract made; and answer by wire what is consequence if company do not enter upon performance of contract in October. Will it require new legislation before any other company can do the work, or does non-compliance work a forfeiture?

W. H. PAINTER,
14 Wall Street.

Telegram from Superintendent Foreign Mails to W. H. Painter, esq.

No. 29834.]

WASHINGTON, July 26, 1873.

W. H. PAINTER, Esq.,
14 Wall Street, N. Y.:

Have mailed documents desired. Cannot undertake to decide question submitted.

JOSEPH H. BLACKFAN,
Superintendent.

Henry Clews, esq., to the Postmaster-General.

BANKING-HOUSE OF HENRY CLEWS & Co.,
32 Wall Street, New York, July 29, 1873.

SIR: Some time since I wrote you respecting the bond of the Pacific Mail Steamship Company for their last China mail contract, upon which my name appears as surety, and from which position I asked to be relieved. The board of directors, to whom the subject was brought for consideration, have selected Mr. George H. Bradbury, president, in lieu of A. B. Stockwell, late president, and Rufus Hatch, esq., instead of myself, for the proper execution of a bond to replace the other.

May I trouble you in so far as to see that the proper form of bond is sent President Bradbury for execution at your earliest convenience, and that the old bond bearing my name is canceled?

Your good offices in the matter will be appreciated by

Yours, sincerely,

HENRY CLEWS.

Hon. JNO. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

The Superintendent of Foreign Mails to Henry Clews, esq.

No. 29881.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., July 31, 1873.

SIR: Referring to previous correspondence, and to your letter of the 29th instant to the Postmaster-General, in relation to your release as surety for the Pacific Mail Steamship Company, I have to inform you that in the case of the release of Howard Potter and Francis Skiddy as sureties, under the original contract with said company, it was arranged with the Postmaster-General that the company should enter into a new contract, *with new sureties*, in the stead and place of the contracts entered into in 1866-'67 for the China mail monthly service; and such a contract was prepared by the company, submitted for the approval of the Postmaster-General, and duly executed on June 1, 1872, a copy of which was published in the last annual report of this Department, pp. 199-203, a copy of which report is herewith inclosed.

The contract for the additional monthly service, in which you are named as one of the sureties, is published in the same report, on pp. 196-198, and I suppose it will be necessary to pursue the same course in the present instance.

The new contract should be drawn up after the model of that of June 1, 1872, but reciting only the provisions of the additional contract of 29th August, 1872, in which you are named as one of the sureties.

You will, therefore, please see that the proper form of contract to meet what is desired is prepared by the company and submitted to this Department.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

HENRY CLEWS, Esq.,
32 Wall Street, New York, N. Y.

The President of the Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 12, 1873.

DEAR SIR: Mr. Henry Clews, not now being a director in this company, desires that his name as surety be withdrawn from the mail contract. Will you do me the favor to say whether this can be done?

I would suggest that Mr. Rufus Hatch, banker, and myself as president, be substituted for Mr. Clews and Mr. Stockwell; and if so, what forms must we go through?

Very sincerely, yours,

GEORGE H. BRADBURY,
President.

JOSEPH H. BLACKFAN, Esq.,
Superintendent Foreign Mail Service, Washington, D. C.

The Superintendent of Foreign Mails to the President of the Pacific Mail Steamship Company.

No. 29966.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., August 14, 1873.

SIR: I have to inform you, in reply to your letter of 12th instant, relative to the withdrawal of Mr. Henry Clews from the contract entered into by your company, that Mr. Clews has already applied to this Department for a release from said contract, and I inclose herewith a copy of my letter to him in reply to his application.

You will please cause to be prepared a new contract in accordance with the statement in my letter to Mr. Clews, substituting the names of Mr. Rufus Hatch and yourself for those of Mr. Clews and Mr. Stockwell, sureties in the original contract, and the same will then be submitted to the Postmaster-General for his approval.

I send you by to-day's mail, under separate cover, a copy of the Postmaster-General's report for 1872, referred to in my letter to Mr. Clews, and also a rough draught of the new contract, containing what I suppose to be all the necessary stipulations.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

GEO. H. BRADBURY, Esq.,
President Pacific Mail Steamship Company,
59 and 61 Wall Street, New York, N. Y.

Henry Clews, esq., to the Postmaster-General.

BANKING-HOUSE OF HENRY CLEWS & Co.,
32 Wall Street, New York, August 15, 1873.

DEAR SIR: I now have the pleasure of inclosing, properly executed, bond of the Pacific Mail Steamship Company, by George H. Bradbury, president, and George H. Bradbury and Rufus Hatch as sureties.

Kindly substitute this in place of the one now on file with my name on as surety, and return same to me.

Very truly, yours,

HENRY CLEWS.

Hon. JNO. A. J. CRESWELL,
Postmaster-General, Washington, D. C.

The Superintendent of Foreign Mails to Henry Clews, esq.

No. 29994.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., August 20, 1873.

SIR: I have to return herewith the contract of the Pacific Mail Steamship Company, received with your letter of the 15th instant, and to request that you will please cause the following alterations to be made in the text of the same, viz:

First page, twelfth line, substitute the words, "were heretofore," instead of "have been."

Second page, seventh line from bottom, strike out the word "further."

Third page, fourth line, strike out the word "further."

The certificate of the postmaster at New York should also appear on the contract in the following words:

POST-OFFICE, NEW YORK, August —, 1873.

The undersigned, postmaster at New York, State of New York, certifies, under his oath of office, that he is acquainted with the above guarantors, and knows them to be men of property and able to make good their guarantee.

_____, Postmaster.

You will please return the contract so modified, and the same will then be submitted to the Postmaster-General.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

HENRY CLEWS, Esq.,
New York, N. Y.

Henry Clews, esq., to the Postmaster-General.

BANKING-HOUSE OF HENRY CLEWS & Co.,
32 Wall Street, New York, August 22, 1873.

DEAR SIR: As desired in yours of the 20th, I return herein bond of the Pacific Mail Steamship Company, duly executed, with corrections, &c.

I would request the return of the old bond, or its cancellation.

Yours truly,

HENRY CLEWS.

JOS. H. BLACKFAN, Esq.,
Superintendent, &c., Washington, D. C.

Contract referred to in the foregoing.

This article of contract, made the twenty-third day of August, in the year of our Lord one thousand eight hundred and seventy-three, between the United States of America (acting in this behalf by their Postmaster-General) and the Pacific Mail Steamship Company, with George H. Bradbury and Rufus Hatch, esquires, as sureties, witnesseth :

That whereas the said Pacific Mail Steamship Company were heretofore accepted, in accordance with the stipulations and provisions of sections 3 and 6 of the act of Congress, approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873," and in conformity with the advertisement inviting proposals for said service, issued by the Postmaster-General of the United States on the 5th day of June, 1872, as contractors for the conveyance of an additional monthly mail on the mail-steamship route between the port of San Francisco and the port of Hong-Kong, China, via Yokohama, Japan, with a regular branch line running in connection with the main line between Yokohama and Shanghai, China, at the sum of five hundred thousand dollars for the performance of twelve round trips per annum, for a term of ten years from and after the first day of October, eighteen hundred and seventy-three, and upon the same conditions and limitations as prescribed by existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof ;

And whereas the said Pacific Mail Steamship Company, on the 29th day of August, 1872, entered into articles of contract with the United States of America, acting in that behalf by their Postmaster-General, for the conveyance of the said mails in conformity with the provisions and stipulations of the said act of Congress, with Alden B. Stockwell and Henry Clews, esquires, as its sureties in the said contract ;

And whereas the said Pacific Mail Steamship Company have desired to procure the discharge and release of the said Stockwell and Clews as the sureties for the company under said contracts, and have offered to substitute therefor George H. Bradbury, of Englewood, New Jersey, and Rufus Hatch, of the city of New York, esquires, as sureties in their stead ;

And whereas the United States, acting by their Postmaster-General in this behalf, have consented and agreed with the said company to accept and receive the said George H. Bradbury and Rufus Hatch as sureties for the performance and service to be rendered by the said steamship company under said contracts, in lieu of said Stockwell and Clews, as sureties therefor and thereunder, and to that end to accept and receive a new contract upon the part of said steamship company, with the said George H. Bradbury and Rufus Hatch as sureties for the performance of the service provided for by said first-named contracts, respectively, and with the like stipulations and conditions :

Now, therefore, these presents witness that the said Pacific Mail Steamship Company, contractors, and the said George H. Bradbury and Rufus Hatch as sureties, do jointly and severally undertake, covenant, and agree with the United States, and do bind themselves to transport the mails of the United States between the ports of San Francisco and Hong-Kong, in China, touching at Yokohama, Japan, both on the outward and inward passages, to land and receive mails, with a regular connecting branch line of steamers between Yokohama and Shanghai, China, twelve round trips per annum, by an additional monthly line of first-class American steamships, to conform in all respects to the

requirements and provisions of the third section of the act of Congress above cited, approved June 1, 1872, and the advertisement of the Postmaster-General, issued in accordance therewith, dated June 5, 1872, and of sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the first of October, eighteen hundred and seventy-three. And the said contractors do further covenant and agree with the United States, and do bind themselves, that the steamships hereafter offered for the service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, of the best materials, and after approved models, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war; and before acceptance, the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with; and further, that the said steamships, after acceptance by the Postmaster-General, and during the period they may be employed in conveying the mails, shall be kept up by alterations, repairs, and additions, as the exigency may require, fully equal to the best state of steamship improvement attained, and if not so kept up and maintained, they may be rejected by the Postmaster-General of the United States, as not meeting the requirements of the act of Congress authorizing the additional monthly service, and other satisfactory steamships required in their place. And the said contractors do further covenant and agree, and do bind themselves to carry the United States mails during the existence of their contracts, without additional charge, on all the steamers they may run upon said line, or any part of it, or any branch or extension thereof; and they do further covenant and agree to transport, free of expense, on each and every steamer, a mail-agent of the United States, to take charge of, and arrange the mail-matter, and to assign to such agent a separate state-room on the upper or main deck, with suitable accommodations for that purpose; and it is further covenanted and agreed by the said contractors, and they do bind themselves

First. To dispatch an additional steamship from San Francisco on the sixteenth day of each month and from Hong-Kong on the twenty-seventh of each month, or upon such other days as may be hereafter selected, with the approval of the Postmaster-General, the departures to be always so arranged as to alternate at equal and regular intervals with those of the present monthly line during its continuance, and to form in connection therewith a regular semi-monthly mail-service between San Francisco and Hong-Kong via Yokohama.

Second. That the time occupied in making each passage between San Francisco and Hong-Kong shall not exceed thirty-two days in summer and thirty-five days in winter, including detention at Yokohama, which is not to exceed two days on the outward and three days on the inward voyage; and the time occupied in making each passage on the branch line between Yokohama and Shanghai shall not exceed eight days, including detention at Hiogo and Nagasaki, which is not to exceed twenty-four hours at each port, and further, to perform the service in conformity with such schedule of days and hours of departures and arrivals as shall be approved by the Postmaster-General of the United States.

Third. To transport the mails in a safe and secure manner, free from wet or other injury, in a separate apartment in each steamship, to be fitted up for the exclusive accommodation of the mail.

Fourth. To take the mail and every part of it from, and deliver it and

every part of it into the post-offices at San Francisco and Hong-Kong, and the offices of the United States postal agents at Shanghai, (China,) Yokohama, (Japan,) and other Japanese ports of call.

They also undertake, covenant, and agree with the United States, and do bind themselves, to be answerable for the proper care and transportation of the mails, and accountable to the United States for any damages which may be sustained by the United States through the unfaithfulness or want of care of their officers, agents, and employes; and they do further covenant and agree that they will not transmit, by themselves or their agents, or be concerned in transmitting, commercial intelligence more rapidly than by mail, and that they will not carry, or suffer to be carried, letters or newspapers out of the mail, and they will not knowingly convey any person carrying on the business of transporting letters or other mail-matter, without the special consent of the Post-Office Department of the United States; and further, that they will convey, without additional charge, post-office blanks, mail-bags, and the occasional special agent on business of the Post-Office Department exclusively, on the exhibition of his credentials.

For which services, when performed, the said Pacific Mail Steamship Company are to be paid by the United States the sum of five hundred thousand dollars per annum, (being at the rate of forty-one thousand six hundred and sixty-six dollars for each round voyage,) in the currency of the United States, in quarterly payments, on the receipt, at the Post-Office Department, of satisfactory evidence of the performance of the round voyages embraced in said payments, provided that the moneys payable under this contract shall be paid while the said Pacific Mail Steamship Company, or its successors in interest, shall maintain and run the line of steamships for the transportation of freight and passengers at present run between New York and San Francisco, via the Isthmus of Panama, by the said Pacific Mail Steamship Company and no longer; said payments, however, to be subject to deductions, fines, and penalties imposed by the Postmaster-General for failures and irregularities, as hereinafter stipulated. It is hereby also stipulated and agreed, by the said contractors and their sureties, that in case of failure, from any cause, to perform any of the regular monthly voyages stipulated for in this contract, a *pro-rata* reduction shall be made from the compensation on account of such omitted voyage or voyages. And it is further stipulated and agreed that suitable fines and penalties shall be imposed, in the discretion of the Postmaster-General, for delays and irregularities in the performance of the service. If delays occur in the arrivals of the steamers according to schedule, the company will be fined in a sum not exceeding two thousand dollars for every forty-eight hours; and should delays occur in their departure, a fine will be imposed not exceeding one thousand dollars for every twenty-four hours, except in cases of unforeseen and uncontrollable events; and suitable fines shall also be imposed unless the delinquency shall be satisfactorily explained to the Postmaster-General in due time, for failure to take or deliver the mail, or any part of it; for suffering it to be wet, injured, lost, or destroyed; for carrying it in a place or manner that exposes it to depredation, loss, or injury by being wet or otherwise; and for setting up or running an express to transmit letters or commercial intelligence in advance of the mails; or for transmitting knowingly, or after being informed, any one engaged in transporting letters or mail-matter in violation of the laws of the United States. And it is hereby further stipulated and agreed that the Postmaster-General shall have the power to determine

this contract at any time in case of its being underlet or assigned to any other party, and that he may annul the contract for repeated failures, for violating the post-office laws of the United States, for disobeying the instructions of the Department, or for transporting persons conveying mail-matter out of the mails as aforesaid; and that this contract shall, in all its parts, be subject to, and in all respects governed by, the requirements and provisions of the third and sixth sections of the act of Congress approved June 1, 1872, entitled "An act making appropriations for the service of the Post-Office Department for the year ending June thirty, eighteen hundred and seventy three;" and also of the act of Congress approved the 31st of April, 1808, entitled "An act concerning public contracts," so far as the provisions of the act last cited shall apply thereto; and it is hereby further stipulated and agreed that this contract may at any time be terminated by Congress.

In witness whereof the said Postmaster-General has caused the seal of the Post-Office Department to be affixed hereto, and has attested the same by his signature, and the said the Pacific Mail Steamship Company, by George H. Bradbury, president, and their sureties, have hereto set their hands and seals the year first hereinbefore written.

JNO. A. J. CRESWELL, [SEAL.]

Postmaster-General.

Signed, sealed, and delivered by the Postmaster-General, in presence of—

JOSEPH H. BLACKFAN.

PACIFIC MAIL STEAMSHIP COMPANY, [SEAL.]

By GEO. H. BRADBURY, *President.*

GEO. H. BRADBURY. [SEAL.]

Attest: W. H. LANE, *Secretary pro tem.*

RUFUS HATCH. [SEAL.]

Witness: JENNINGS COX.

Signed, sealed, and delivered by the Pacific Mail Steamship Company, by George H. Bradbury, president, and signed by George H. Bradbury and Rufus Hatch, in presence of—

HAMILTON FISH, JR.

POST-OFFICE, NEW YORK,
August —, 1873.

The undersigned postmaster at New York, State of New York, certifies under his oath of office that he is acquainted with the above guarantors, and knows them to be men of property, and able to make good their guarantee.

T. S. JAMES, P. M.
At New York.

NOTE.—This contract signed by the Postmaster-General on the day it bears date, *August 23, 1873.*

The Superintendent of Foreign Mails to the President of the Pacific Mail Steamship Company.

No. 30036.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., August 27, 1873.

SIR: The contract, with new sureties, of the Pacific Mail Steamship Company for the additional monthly mail-service between San Francisco,

Japan, and China, which was returned to this Department by Mr. Henry Clews, under date of the 22d instant, having been duly executed by the Postmaster-General, I transmit herewith a certified copy of the same, the receipt of which you will please acknowledge.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

GEORGE H. BRADBURY, Esq.,
President of Pacific Mail Steamship Company,
59 and 61 Wall Street, New York, N. Y.

The Superintendent of Foreign Mails to Henry Clews, esq.

No. 30035.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., August 27, 1873.

SIR: I have to acknowledge the receipt of your letter of the 22d instant, returning contract, with new sureties, of the Pacific Mail Steamship Company for the additional monthly mail-service between San Francisco, Japan, and China, and to inform you that the same has been duly executed by the Postmaster-General.

The rules of the Department will not permit of granting your request for the return or cancellation of the previous contract—superseded by the new one—as it forms a part of the files of the Department, and has in terms been replaced by the present contract.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

HENRY CLEWS, Esq.,
No. 32 Wall Street, New York, N. Y.

P. S.—A certified copy of the new contract has been mailed to the president of the Pacific Mail Steamship Company.

J. H. B.

The President of the Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, August 28, 1873.

SIR: I beg to acknowledge receipt of your favor of the 27th instant, inclosing a certified copy of contract for semi-monthly China mail-service, with new sureties on same, and thank you for your prompt attention to this matter.

Respectfully,

GEO. H. BRADBURY,
President.

JOSEPH H. BLACKFAN, Esq.,
Superintendent Foreign Mails, Post-Office Department,
Washington, D. C.

The Superintendent of Foreign Mails to the President of the Pacific Mail Steamship Company.

No. 30406.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., October 24, 1873.

SIR: I am directed by the Postmaster-General to request that you will furnish him with a full statement, in writing, of the reasons which have prevented your company from commencing the performance of the additional monthly mail-service between San Francisco and Hong-Kong, via Yokohama, authorized by sections 3 and 6 of the act of Congress approved June 1, 1872; which service under the provisions of the law and contract should have been commenced on the 1st of October instant.

You will also please state what preparations you are making for the commencement of this additional mail-service to Japan and China, and when the company expects to be able to commence said service.

At your recent interview with the Postmaster-General, at this Department, you explained to him verbally the causes which prevented your company from commencing this additional mail-service on the 1st instant, as required by the law and contract, and also stated that the company was making every effort possible to comply with the requirements of the law and contract at the earliest practicable date; but there is nothing on the files of this Department furnishing any information on the subject.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

GEO. H. BRADBURY, Esq.,
President of the Pacific Mail Steamship Company,
New York City.

Telegram from Superintendent of Foreign Mails to President Pacific Mail Steamship Company.

No. 30432.]

WASHINGTON, D. C., October 30, 1873.

GEO. H. BRADBURY,
President of Pacific Mail Steamship Company,
New York City.

Please furnish information requested in my letter of 24th instant, which is wanted for immediate use.

JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

Telegram from President of Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

NEW YORK, October 31, 1873.

To JOSEPH H. BLACKFAN,
Superintendent Foreign Mails, P. O. D.:

Information preparing. Will be sent you by Tisdell, this evening's train.

GEO. H. BRADBURY,
President.

The Secretary of Pacific Mail Steamship Company to the Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, October 31, 1873.

SIR: We have the honor to acknowledge the receipt of your letter No. 30406, and also of your telegram of this date, to which we replied that the required information would be sent by Mr. Tisdell this evening. We now beg to state that, promptly on receipt of your letter, we took measures to collate the facts as to our non-commencement of the semi-monthly China service, for which we had to await the presence hereof our superintendent of hulls. The letter to the Postmaster-General will be delivered by Mr. W. P. Tisdell, 1st proximo, or early Monday morning.

Very respectfully, your obedient servants,

PACIFIC MAIL STEAMSHIP COMPANY,
By THEO. T. JOHNSON, *Secretary*.

Hon. JOSEPH H. BLACKFAN,
*Superintendent Office Foreign Mails,
Post-Office Department, Washington, D. C.*

The Vice-President of Pacific Mail Steamship Company to the Postmaster-General.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, November 1, 1873.

SIR: In the matter of the contract between the Postmaster-General and the Pacific Mail Steamship Company for an additional semi-monthly mail-service between San Francisco, Japan, and China, said service to be performed with American-built iron steamships of not less than 4 000 tons register, and to have been commenced October 1, 1873, we beg to submit the following, which will explain the reason of our failure to have placed the ships on the line as per contract.

Immediately after the passage of the act of Congress providing for a semi-monthly mail-service to China and Japan, in June, 1872, this company entered into a contract for the construction of two iron screw-steamers of upward of 4,000 tons register, to class "100 A, Lloyds," to be fitted with compound engines, guaranteed to make a speed of not less than 14½ knots per hour, and to be completed in time to commence the service as specified in the act.

The contractor began work upon these ships as early as it was possible for him to secure so large an amount of material, of a weight and size never before used by ship-builders in America, and so rapidly did he accumulate this material that we had reasonable hopes of having the ships in readiness at the appointed time. But as the work progressed, unthought-of obstacles presented themselves, and the skill of the most skillful was baffled in the attempt to overcome them. First and foremost of the difficulties which beset the contractor was the information received from the proprietors of the rolling-mills, that they had no machinery large enough to roll the beams required for these ships. New machinery had to be prepared, and before it was completed and in operation, five months of valuable time had been lost. With

the finishing of the beams our contractor took new courage. Then came the strike of the puddlers in the iron-mills, upon whose labor he depended for angles and smaller iron-work. Then came the labor-strike for less time and increased wages, and finally the long and severe winter of 1872-'73, when labor upon materials and metals, necessary to be done out of doors, was seriously retarded, and at times entirely stopped.

To the foregoing might be added many minor impediments, but equally potent in retarding the work. Against these untoward circumstances the directors and officers of the company have struggled with persistent energy, and since the early spring the work upon the ships has been pushed with renewed vigor, and it is with gratification that we now announce the near completion of the hulls of the two ships. The first will be launched early in December, while the machinery for both is so far advanced as to cause no delay. These ships, when completed and on the route, will class among the finest in the world, and, indeed, it is the testimony of experts, of our own and other countries, who have examined them that they will be in most respects superior to any other ships afloat, and when ready for service they will have cost us nearly two and a quarter millions of dollars. In addition to these vessels, we had previously contracted for, and have now completed, four iron screw-steamers of about 3,000 tons register, and with a carrying capacity fully equal thereto, all of which are now employed in our Atlantic and Pacific line.

Our new iron ship Colima is on her voyage to the Pacific, and is due in San Francisco December 1, from which port she will take her departure for China December 16. While it is true that the Colima does not register 4,000 tons, she has a carrying capacity equal to that number, and we hope to have her accepted temporarily upon the China line, until we can place in service the ship now constructing, in pursuance of our contract with the Government.

We regret exceedingly that these ships should not have been ready to commence the service at the specified time, but, in view of all the circumstances enumerated, we sincerely hope that you may feel disposed to be lenient with us, thereby enabling us to carry out the requirements of the contract, and thus aiding the only established American line of steamships engaged both in the coasting and foreign trade, and permitting it to become a pride and honor to the great Government under whose flag it sails its ships, and to whom it looks for protection.

We have the honor to ask your attention to the fact that we are performing the semi-monthly service with our mail-steamers, now accepted as such by the Department, under our first China mail contract, and that we propose placing on the route, in addition, our new iron ship Colima (now *en route*) and the new iron ship Granada, and with these and the mail-steamers now accepted by the Department we propose to perform a semi-monthly service until the ships referred to shall take the place of the wooden mail-steamers now on the line; to all of which we ask your kind permission and support, promising an equally faithful and effective compliance with the terms of this, as we may justly state we have maintained for seven years under those of the first contract.

We would also beg your attention to the fact that in May, 1872, we put on a semi-monthly line of steamers between San Francisco and China, and that, with three unavoidable exceptions, we have continued it to this time with our regular mail-steamers, and with others chartered for the purpose at a heavy cost to the company.

This was done with a view of increasing commercial and mail facilities between the United States, China, Japan, and India, and we have uninterruptedly ran, in connection therewith, five steamers per month between the five ports, (four in Japan, and Shanghai in China,) comprising our branch line, which we are required to perform but once a month under our contract of January 1, 1867. All this extra and voluntary service has largely increased the receipts of the United States, both in duties and postage, and has facilitated the interests of commerce and travel with those countries and around the world in a marked degree, and these at the cost, and as a direct result of the enterprise, of this company.

We would ask your attention most respectfully to the following schedule of departure of steamers both from San Francisco and Hong-Kong for the remainder of the year 1873, and we will take pleasure in forwarding the table for the year 1874 as soon as the same shall have been prepared :

From San Francisco: Alaska, October 1; China, October 16; Colorado, November 1; Japan, November 17; Great Republic, December 1; Colima, December 16.

From Hong-Kong: Japan, October 12; Great Republic, October 27; Alaska, November 12; China, November 27; Colorado, December 12; Japan, December 27.

In conclusion, we beg to submit for your consideration the full facts as presented herein, and we hope that you may find it entirely consistent and within your power to allow us to continue the service as we are now doing, until we shall be able to place all our new ships upon the line, when we feel sure you will have no reason to regret that you extended a helping hand to one of America's greatest enterprises in a time of need.

We have the honor to be, sir, your obedient servants,
PACIFIC MAIL STEAMSHIP COMPANY,
By S. K. HOLMAN, *Vice-President.*

Hon. JOHN A. J. CRESWELL,
Postmaster-General, Washington, D. C.



NOTE.—The following documents, marked A and B, have been received from the Pacific Mail Steamship Company, with a request that they may be placed on the files of this Department :

A.

Copy of letter from W. P. Tisdal to Hon. Henry G. Stebbins.

WASHINGTON, December 18, 1873.

DEAR SIR: I am glad that the opportunity presented itself for me to pay a visit to the ship-yards of Messrs. John Roach & Son, at Chester, Pa.; for not only am I able to make a favorable report to you, but I am able at the same time to correct many misstatements which have gained credence in Washington as well as in New York. Indeed, I was myself greatly surprised at what I saw, and I am only too glad to bear testimony that my information has been entirely incorrect, and I shall leave nothing undone in making known the exact truth of our position touching the matter of the construction of our new ships.

I arrived at Chester early Wednesday morning and proceeded directly to the ship-yard, where, upon application at the office, I received a pass by which I was permitted access to all parts of the inclosure. On board the *City of Panama*, No. 137, I found Mr. Edward Faron, who was superintending the putting in of the machinery, and by him was shown through this ship. It was useless for me to try to count the number of men employed thereon. In fact, so many were there that I wondered how all could work to advantage. Mr. Faron informed me that he expected to have steam on this ship by Saturday. It is far advanced toward completion, and all the work which can be done in Chester will be finished in a few days, when she will be in readiness to go to New York for her outfit.

By Mr. Faron I was introduced to Mr. L. H. Boole, the superintendent of the works, by whom I was kindly shown through every department of the yard, and through the Pacific Mail Steamship Company's ships. Going on board the *Cathay*, I found the work upon her much further advanced than I had supposed could be possible, after having heard so many reports to the contrary. This great ship was alive with mechanics, and so rapidly were they putting the many pieces in place that one could almost see her grow. Mr. Boole informed me that upon the *Cathay* they had nearly two hundred men at work, and from my own observation, without attempting to count them, I felt satisfied that his statement was correct. Upon the four ships building for our company I found that there were some six hundred men employed, which number does not include one hundred and twenty men in the joiner department. In the store-room of the joiner department I was shown thousands of finished pieces, consisting of sash, doors, panels, frames, skylights, &c., which Mr. Boole informed me were all ready to be placed in position on board the *City of Panama* and the *Cathay* as soon as the iron-workers can make way for them. Mr. Boole further informed me that, with four-weeks notice, the *Cathay* could be launched and on her way to New York in readiness to receive her engines and boilers, and he expressed the opinion that, with good management on the part of the contractors in New York, the ship would be ready to take her departure early in June; to all of which I agree, judging from her present appearance.

The sister ship *Nippon* lacks a few plates in the finish of her hull, though the great number of men employed upon her will warrant the prediction that she will be ready for her engines in April.

The ships *Cathay* and *Nippon* are the most beautiful models of workmanship that I have ever seen, and though my experience with ships is somewhat limited, I do not hesitate to pronounce them superior to anything which floats upon the sea, and in this I have no fear of contradiction.

I learned that the weekly pay-roll in Mr. Roach's yard numbered from fifteen to eighteen hundred men, and to his credit be it said that during the recent panic, he was the only manufacturer in Chester who continued work, and not a man was discharged from his service, nor was one permitted to leave the yard on Saturday night without first having received his pay.

A word as to the manner in which the work is carried on. Entirely different sets of hands are employed on the different jobs. For instance, some six hundred men are employed on the Pacific Mail Company's work, and an equal number upon Government work, and the balance of the force is distributed upon other work, each gang attending strictly to its own charge, not knowing what another is doing.

Could the Postmaster-General, Senators, members, and other public officers know exactly what we are doing, and see the great ships which we have so nearly ready for service, I am sure they would extend to us a helping hand, and save, and help to build up the honor of our country, America's greatest enterprise, the Pacific Mail Steamship Company.

I am, sir, very respectfully, yours,

W. P. TISDEL.

Hon. HENRY G. STEBBINS,
50 Exchange Place, New York.

B.

Memorandum of iron screw-steamers already built and now building by Pacific Mail Steamship Company.

NOW IN SERVICE.

Acapulco, 3,000 tons; length, 230 feet; depth, 30½ feet; beam, 40 feet; length over all, 300 feet; carries 2,000 tons freight, 400 tons coal; cost complete, \$550,000. Acapulco, now running between New York and Aspinwall.

Granada, 3,000 tons; length of keel, 280 feet: length over all, 300 feet; beam, 40 feet; depth, 30½ feet; carries same as above; cost complete, \$550,000. Granada sails December 16, for San Francisco.

Colima, 3,500 tons; length of keel, 292 feet; length over all, 312 feet; beam, 40 feet; depth, 30½ feet; carries 2,400 tons freight, 700 tons coal; cost complete, \$600,000. Colima sailed October 2, for San Francisco, with 800 tons freight and 2,300 tons of coal.

Colon, 3,000 tons; length of keel, 280 feet; length over all, 300 feet; beam 40 feet; depth, 30½ feet; carries 2,000 freight, 400 tons coal; cost complete, \$550,000.

The Acapulco, Granada, and Colon can accommodate 190 cabin and 300 steerage passengers each. The Colima, 210 cabin and 400 steerage.

NOW BUILDING.

City of Pekin, 6,000 tons; length 421 feet; beam, 47.3 feet; depth, 36 feet; cost of hull, engines, spare sails, and boats, as per contract, \$1,052,000; outfit, estimated, \$75,000; total, \$1,127,000.

By terms of contract the City of Pekin was to have been completed and delivered November 1, 1873. Contract is not yet fulfilled. Company have made payments, as work progressed, amounting to \$600,000. Contract made June 21, 1872.

City of Yeddo, 6,000 tons, dimensions and cost same as above. By terms of contract, the City of Yeddo is to be completed and delivered on the 21st of January, 1874. Company has made payments, as work progressed, amounting to \$500,000. Contract made June 21, 1872.

Messrs. John Roach & Son, builders, expect to be able to deliver one of the above ships in February, and one in April next. But the company's agent overseeing their construction believes that the first one cannot be delivered before June.

City of Panama, 1,700 tons; length of keel, 242 feet; beam, 36 feet; depth, 20 feet; contract-price of hull and engine, \$250,000. City of Panama paid for. Will be ready for service in about two weeks. Estimated cost of outfit, \$50,000.

City of Callao, 1,700 tons. Dimensions and cost same as above. By

terms of contract ship should have been completed and delivered September 1, 1873. Contract not yet fulfilled. Payments made by the company as work progressed, \$165,000.

NEW YORK, *December 15, 1873.*

The Pacific Mail Steamship Company to the Postmaster-General.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, July 8, 1874.

SIR: We have the honor to inform you that the City of Peking, a new American-built iron screw-steamship of over five thousand tons, is now at the foot of Ninth street, East River, New York Harbor, ready for inspection and acceptance for service in carrying the United States mails between San Francisco and China and Japan, under the contract of the Government with this company of August 23, 1873. The City of Tokio, a steamship of the same size and character, is also in New York, ready for inspection, and will sail for the Pacific coast within thirty days after the City of Peking. Both these steamships have been so constructed as to be readily adapted to the armed naval service in case of war; and we have also informed the Secretary of the Navy that the same are ready for inspection.

We have the honor to request that you will cause the ships to be inspected and accepted as soon as possible.

We are, very respectfully, your obedient servants,
PACIFIC MAIL STEAMSHIP COMPANY,
By RUSSELL SAGE, *President.*

Hon. J. W. MARSHALL,
Postmaster-General, Washington, D. C.

The Postmaster-General to the Attorney-General.

No. 32592.]

POST-OFFICE DEPARTMENT,
Washington, July 22, 1874.

SIR: By act of Congress approved June 1, 1872, (Post-Office appropriation bill, 17 Statutes at Large, 201,) the Postmaster-General was authorized to contract with the lowest bidder, for a term of ten years from October 1, 1873, for the conveyance of an additional monthly mail between San Francisco, Japan, and China, at a compensation not to exceed the rate per voyage paid under the contracts then existing for the monthly mail between the same points and upon the same conditions and limitations as prescribed by the existing acts of Congress in reference thereto, and the respective contracts made in pursuance thereof; and the contractors were required to carry the mails on all the steamers they might run upon said line, or any part of it, or any branch or extension thereof, and all steamships thereafter accepted for said service were to be of not less than four thousand tons register, built of iron, with their engines and machinery wholly of American construction, and so constructed as to be readily adapted to the armed naval service of the United States in case of war, and to be inspected and reported to the Secretary of the Navy and the Postmaster-General as complying with this condition before acceptance.

The Government to have the right, in case of war, to take for the use of the United States any of the steamers of the line, and in such case to pay a reasonable compensation therefor.

After due public advertisement the Postmaster-General entered into contract (dated August 29, 1872, with supplemental contract and new sureties dated August 23, 1873) with the Pacific Mail Steamship Company, then carrying, under prior contracts, the monthly mail over the same line, in steamships regularly accepted for said service under the acts of Congress approved February 17, 1865, and February 18, 1867, respectively, by which the company bound itself "to transport the mails of the United States between the ports of San Francisco and Hong-Kong in China, touching at Yokohama (Japan) both on the outward and inward passages, to land and receive mails, with a regular connecting branch-line of steamers between Yokohama and Shanghai, (China,) twelve round-trips per annum, by an additional monthly line of first-class American steamships, to conform in all respects to the requirements and provisions of the third section of the act of Congress approved June 1, 1872, and the advertisement of the Postmaster-General, issued in accordance therewith, dated June 5, 1872, and of sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the first of October, eighteen hundred and seventy-three." And the said contractors further covenanted and agreed "that the steamships hereafter offered for the service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, of the best materials, and after approved models, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war; and, before acceptance, the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with. And further, that the said steamships, after acceptance by the Postmaster-General and during the period they may be employed in carrying the mails, shall be kept up by alterations, repairs, and additions fully equal to the best state of steamship improvement attained; and if not so kept up and maintained, they may be rejected by the Postmaster-General of the United States as not meeting the requirements of the act of Congress authorizing the additional monthly service, and other satisfactory steamships required in their place." It was further provided as follows: "That this contract shall, in all its parts, be subject to, and in all respects governed by, the requirements and provisions of the 3d and 6th sections of the act of Congress approved June 1, 1872, entitled 'An act making appropriations for the service of the Post-Office Department for the year ending June 30, 1873,' and stipulated for the payment by the United States to the said Pacific Mail Steamship Company of the sum of \$500,000 per annum, (being at the rate of \$41,666.66 for each round voyage,) in quarterly payments;" and that, in case of failure from any cause to perform any of the regular monthly voyages, a *pro rata* deduction was to be made from the compensation on account of such omitted voyage or voyages.

Extra trips between San Francisco, Japan, and China, in excess of the monthly service provided for by the original law and contracts, were made by the steamers of the Pacific Mail Steamship Company conveying the mails, commencing in the year 1869, and continuing, with more or less frequency, until the present; for which extra service the said company has, on its application therefor, been allowed and paid, under the provisions of the general law, the amount of sea-postage on the mails conveyed by such extra steamers, up to and including the inward trip by the steamship Great Republic, at San Francisco, on November 23,

1873. Some of these extra trips were made by steamships regularly accepted under the original law and contracts, and some by steamers which had not been so accepted; and a second monthly mail-service by such extra steamers has been maintained, with only a few omissions, since the month of May, 1872. But the company were not ready to offer for the said additional monthly service by October 1, 1873, the American-built iron steamships, of not less than four thousand tons register, and built according to the requirements of the clause of the contract fixing the character of the vessels thereafter to be offered for such service. The company asserts that this failure was caused by unexpected and unusual difficulties, retarding construction and excusing delay, which are fully set forth in its communications to this Department; and it is claimed by the company that it was not an absolute requirement of the law of June 1, 1872, that the additional monthly service should be performed from October 1, 1873, in American-built iron steamships of not less than four thousand tons register, but that the law meant and provided that the service should be performed in ships *accepted* for the mail-service according to the conditions and requirements of the previous acts of Congress, and that all ships *thereafter* needed and accepted for the service should conform to the new requirements provided by said act of June 1, 1872, to govern the acceptance of new ships, and that therefore the stipulation in the contract executed by the company that the new ships must be ready to commence the additional monthly service on the 1st of October, 1873, was not an essential requirement *binding the Post-Office Department*.

The company has now actually constructed, and nearly ready for sea, two iron steamships of upward of five thousand tons register, conforming, as is alleged by it, to all the requirements of the contract, and now offers them for service, claiming that the contract is still existing, and that they should be inspected and accepted in accordance therewith.

The action which has been taken by this Department, in view of the failure of the said company to have the new steamships ready for service on October 1, 1873, as required by the contract, is stated in the following extract from the last annual report of my predecessor, dated November 14, 1873:

"The additional service authorized by the law of June 1, 1872, should have been commenced on the 1st of October, 1873, by American-built iron steamships of not less than 4,000 tons register. The company has, however, failed to comply with its contract, because, as is alleged, of unexpected difficulties, which retarded the building of the new steamships now being constructed for this service.

"In the statement submitted by the company, of the causes of its failure to place the new ships on the line on the 1st of October last, it appears that, immediately after the passage of the act of Congress authorizing the additional monthly mail on this route, a contract was made for the construction of two iron screw-steamers of upward of 4,000 tons register, the hulls of which are now nearly completed, and that the first of these ships will be launched early in December next.

"In the month of May, 1872, the Pacific Mail Steamship Company commenced an additional monthly-mail service between San Francisco and Japan and China, which has been maintained regularly, with three exceptions, to the present date, for which service the sea-postages on the mails transported have been allowed as full compensation, under the provisions of the general law fixing the rates of compensation for the sea-conveyance of mails, so that a regular semi-monthly mail-service is now being performed on the line, although by steamers of less ton-

nage than that required for the additional monthly service. The company has requested that it may be permitted to continue the service as at present until it can place the new ships of the required tonnage on the line. It is, doubtless, doing all it can, with its present resources, to comply in good faith with the requirements of the contract at an early day; but as this service was specially authorized by act of Congress, upon certain prescribed terms and limitations, and the success or failure of the enterprise is a question fraught with important national interests, I have not felt at liberty either to annul the contract for the additional monthly service on account of the failure to commence the same on the day fixed by law, or to give any permission or assurance for a continuance of the contract and service, as requested by the company. No good reason is, however, perceived why the company should not be permitted to continue the service as at present until the new ships are completed and placed upon the line, with the understanding that it shall make no claim upon the additional subsidy, or any part thereof, but shall receive the sea-postage only, as heretofore, in full compensation for the additional service, until the contract shall be fully complied with."

No legislation was enacted by Congress at its last session on the subject of this additional contract and service, and no appropriation was made for the payment of the stipulated subsidy therefor or any part thereof.

The company having, by letter from its president, dated the 8th of July instant, requested the inspection and acceptance of its new ships, the City of Peking and the City of Tokio, under the contract of August 23, 1873, conforming, as it alleges, to all the requirements of said contract, the question for decision is, whether or not that contract, it not having been annulled by the Postmaster-General, is an existing agreement under which the new steamships thus tendered by the company should be inspected, and, if found to comply with the requirements of the law, should be accepted for the additional monthly service authorized by the law of June 1, 1872, or whether the continuance or abolition of said additional monthly service is at the option of the Postmaster-General, or whether it has absolutely fallen by operation of law.

Copies of the act of Congress, of the contract and of the correspondence between the Post-Office Department and the company, which was transmitted by the Postmaster-General January 3, 1874, and printed by the House of Representatives in Miscellaneous Document No. 74 of the first session of the Forty-third Congress, are made a part of this communication.

Requesting your opinion on the questions of law herewith submitted at your early convenience, I am very respectfully your obedient servant,

J. W. MARSHALL,
Postmaster-General.

Hon. GEO. H. WILLIAMS,
Attorney-General of the United States, Washington, D. C.

The Attorney-General to the Postmaster-General.

DEPARTMENT OF JUSTICE,
Washington, August 3, 1874.

SIR: The case stated by you in your communication addressed to the Attorney-General under date of the 22d ultimo, is in brief as follows: By act of February 7, 1865, (13 Stat., 430,) the Postmaster-General

was authorized to contract with the lowest bidder for a monthly steamship mail-service between San Francisco and China and Japan, in first-class American seagoing steamships, of not less than three thousand tons burden, for a term of not more than ten years.

This was accordingly done, and the service so contracted for has been continued until now by the Pacific Mail Steamship Company.

By act of June 1, 1872, (17 Stat., 201,) the Postmaster-General was further authorized to contract with the lowest bidder, for a term of ten years from October 1, 1873, for an additional monthly mail-service between the above places, upon the same conditions and limitations, and at rates not to exceed those in the former contracts; "provided, that all steamships hereafter accepted for said service shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States," &c.; and to be inspected and reported to the Secretary of the Navy and the Postmaster-General as complying with this condition before acceptance, &c.

Therefore, under date of August 27, 1872, the Postmaster-General entered into a contract with the above company, as lowest bidder, by which the latter bound itself "to transport the mails of the United States between," &c., "twelve round trips per annum, by an additional monthly line of first-class American steamships, to conform in all respects to the requirements and provisions of the third section of the act of Congress approved June 1, 1872, and the advertisement of the Postmaster-General issued in accordance therewith, dated June 5, 1872, and of sufficient number to perform the required monthly service for and during the term of ten years, commencing on the 1st of October, 1873;" and "that the steamships hereafter offered for the service shall be of not less than 4,000 tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction," &c., (pursuing the terms of the act;) also, "that this contract shall, in all its parts, be subject to, and in all respects governed by, the requirements and provisions of the 3d and 6th sections of the act of Congress approved June 1, 1872, entitled," &c.

The price to be paid for this service was \$500,000 per annum, (or at the rate of \$41,666.66 per voyage,) a *pro rata* deduction to be made for any voyage omitted.

No ships like those specified in this contract have yet been offered and accepted; and out of this condition of things, as modified by facts yet to be stated, arise the questions mentioned below. These facts are that, since 1869, and with more or less frequency until now, the company has made extra trips carrying the mails in excess of a monthly service, for which, upon its application, it has been paid, under the provisions of the general law as for "sea-postage," up to and including a trip ending November 23, 1873. Some of these extra trips were, and some were not, by steamships accepted under the first contract. Since May, 1872, with a few omissions, these extra steamers have kept up a second monthly service.

In his annual report of November 14, 1873, the Postmaster-General states that, upon entering into the second contract, the company immediately provided for the construction of two ships of the character specified in such contract; and that it "is doing all that it can, with its present resources, to comply in good faith with the requirements of the contract at an early day;" also, that he has not "felt at liberty either to annul the contract for the additional service on account of this failure,

or to give any assurance," &c., "for its continuance," although "no good reason is perceived why the company should not be permitted to continue the service as at present until the new ships are completed and placed upon the line," with the understanding that the company shall receive, as full compensation therefor, sea-postage only.

The situation of the parties to the second contract was made the subject of reports to the Senate at its late session, by the Committees on Naval Affairs and on Post-Offices and Post-Roads. These agree in stating that the contract is still in force. No legislation occurred in that connection.

The Pacific Mail Steamship Company, upon being asked by the Postmaster-General to account for its non-fulfillment of its contract, stated as its reasons therefor, first, that it was found by the contractor for the ships, as the work progressed, that the rolling-mills had no machinery large enough to roll the beams required, which, for American shops, were of an unprecedented size, and that five months were lost in preparing such new machinery; and, second, that other considerable time had been lost in consequence of labor-strikes.

The company also suggests that the act of 1872 above does not contemplate that the additional monthly service should be entirely by ships of the size, &c., specified in the contract, but only that such additional ships as might be "thereafter accepted" for that purpose should be; that the act contemplated the chances that the company might become contractors for such additional service, (as appears in section 6,) and therefore provided that the new requirements should affect only "all steamships hereafter accepted," leaving the company free to continue its use of all ships already accepted for postal service under the act of 1865. Therefore, that under the facts already stated as to its extra trips, &c., it was virtually doing all that the law of 1872 required, and so all for which the parties to the second contract had intended to stipulate.

Upon the 8th ultimo the company requested the inspection and acceptance of two new steamships, the City of Peking and the City of Tokio, under the contract of August 20, 1873, which, as is alleged, conform to all the requirements of said contract.

In view of the above statement you ask, whether the contract of August 20, 1873, not having been annulled by the Postmaster-General, is an existing agreement under which the two ships should be inspected, and, if approved, accepted? or, whether the continuance or abolition of such additional service is at the option of the Postmaster-General? or, whether it has absolutely fallen by operation of law?

In my opinion the contract is still obligatory, and, therefore, the company is entitled to the inspection demanded, and to have its steamships, if accepted, placed in the additional mail-service, the continuance or abolition of which is not within the option of the Postmaster-General.

It seems to me plain that the act of 1872 did not require such additional mail-service to be done in steamships of the new class, unless other ships became necessary. The act refers expressly to the existing mail-contract between the places named; and then speaks of steamships "hereafter accepted" for the "additional" service, and requires *them* to conform to a certain description. Plainly, if the steamships *heretofore* accepted should turn out to be sufficient for the new service, as well as for the old, the special requirements as to steamships would have had no effect, for "hereafter" none such would be "accepted," as they would not be offered.

But *the contract* does expressly bind the company "to transport the mails, &c., by an additional monthly line of first-class American steamships, to conform in all respects to the requirements and provisions of the third section of the act of Congress above cited, approved June 1, 1872, &c., and of sufficient number to perform the required additional monthly service for and during the term of ten years, commencing on the 1st of October, 1873;" that is, the entire additional service was to be done in new vessels of the class specified.

We have, then, a case in which an agent has varied the instructions of his principal, so as to make a contract perhaps more beneficial for that principal, but, certainly, more onerous to the other party. What has subsequently happened is, that the contract, as planned by the principal, has been observed by the contractor, while the failure attributed affects only the *variation*. Moreover, the failure is a failure to meet the *volunteer* stipulation (as it were) at the time by which it was to be kept; and that since that day has passed no notice has been given of an intention to avoid the contract therefor.

This statement regards the parties as private persons. It seems to me that the fact that the principal here is the United States, that its plan of contract is, therefore, in a certain sense *public policy* in that respect, which departures therefrom are not, and that, in the case before us, what has happened is, that events have conformed to the declared policy of the Government, and that its views have succeeded, makes the case stronger for the position, that *substantially* the relations between the parties remain unbroken; in other words, that the points in which the contract has been broken are immaterial.

It being conceded that the purposes of Congress have been effected, it seems that other departments of the Government must hold that a failure to obtain, in addition thereto, other benefits stipulated for by agents appointed to make the contract, is not, in general, matter of substance.

In the present case, for instance, Congress desired to put into operation a semi-monthly mail-service between San Francisco, Japan, and China; this has been done. Congress provided that no steamships "hereafter accepted" for that service should be without certain qualifications; this, also, has been done. The Postmaster-General required in the contract, as drawn, that *the whole of that service*, to commence October 1, 1873, should be in vessels having those qualifications; the company has failed herein. In the meanwhile, the company has done "all that it can with its present resources to comply in good faith with the requirements" stipulated for by the Postmaster-General, and the latter, far from suggesting a forfeiture, reports to Congress, in effect, that the contract ought to be held as still subsisting; and thereupon Congress, by inaction, acquiesces in this view, which at the close of its session is indorsed by reports from two of its standing committees.

In my opinion, the matters in which the contract has been violated are not *substantial*; and even if they were, the right to take advantage of such violation has been waived.

I therefore repeat that the contract in question is still obligatory, and the company entitled to have the steamships mentioned above inspected, and, if accepted, placed in the additional mail-service; and that the Postmaster-General has no such *option* as is above suggested.

Very respectfully, your obedient servant,

S. F. PHILLIPS,
Solicitor-General.

Without questioning the correctness of the Solicitor-General's opinion, I prefer to put my approval of it on the following grounds:

1. Looking to the object of the act of June 1, 1872, authorizing an additional monthly mail-service between San Francisco, Japan, and China, and taking into consideration the fact that such additional mail-service has been rendered as provided for in said act, I am of the opinion that it was not an essential part of the contract that the new iron steamships should be furnished by the 1st of October, 1873, if, at that time, it satisfactorily appeared that they would be furnished within a reasonable time thereafter.

2. On the 1st of October, 1873, it was well known by the Post-Office Department that the Pacific Mail Steamship Company was expending large amounts of money in constructing such steamships as were required by the contract, to perform the additional mail-service as therein provided. But, instead of notifying the company that its failure as to time would be regarded as an end to the contract, the Department, it seems, afterward treated the contract as still subsisting, and in view of that fact, and the subsequent proceedings in Congress, I do not believe it would be legal or right now, when the completed steamships have been presented for inspection, for the Government to refuse to receive them into service under said contract, because they were not furnished by the 1st of October, 1873.

3. Considering that the act in question provides for a contract to continue ten years from the 1st of October, 1873, and that the primary objects of this legislation were to subserve the interests of American commerce, and provide ships for the naval service of the United States in case of war, I think it would be subordinating the great ends of the statute to unimportant matters to hold that the will of Congress upon the subject was wholly defeated by the failure of the company to furnish iron steamships within a few months of the time fixed by a specification in the contract, especially when such specification was outside of the requirements of the law authorizing the contract.

Very respectfully, your obedient servant,

GEO. H. WILLIAMS,
Attorney General.

No. 32647.

The Postmaster-General to the Secretary of the Navy.

POST-OFFICE DEPARTMENT,
Washington, August 5, 1874.

SIR: I have the honor to inform you that the Pacific Mail Steamship Company, contractors for the additional monthly mail-service between San Francisco and Hong-Kong, (China,) via Yokohama, (Japan,) authorized by sections 3 and 6 of the act of Congress, approved June 1, 1872, have tendered to this Department the steamships City of Peking and City of Tokio for service in carrying the United States mails between San Francisco and China and Japan, under the contract with said company of August 23, 1873, with a request that they may be inspected, as required by law, at the port of New York, before their departure thence for San Francisco.

The act of June 1, 1872, authorizing this additional monthly mail-service, requires "that all steamships hereafter accepted for said service

shall be of not less than four thousand tons register each, and shall be built of iron, and, with their engines and machinery, shall be wholly of American construction, and shall be so constructed as to be readily adapted to the armed naval service of the United States in case of war; and, before acceptance, the officers by whom they are inspected shall report to the Secretary of the Navy and the Postmaster-General whether this condition has been complied with."

The Attorney-General of the United States having, under date of August 3, 1874, advised this Department that the said contract is in full force and effect, and the company entitled to have the steamships inspected, I have accordingly to request that you will please detail a board of officers, one of whom shall be an experienced naval constructor, and one an experienced naval engineer, to make the required inspection and survey of the steamships City of Peking and City of Tokio, at the foot of Ninth street, East River, New York, and report as soon as practicable.

I am, very respectfully, your obedient servant,

J. W. MARSHALL,
Postmaster-General.

Hon. GEO. M. ROBESON,
Secretary of the Navy.

Secretary of the Navy to the Postmaster-General.

NAVY DEPARTMENT,
Washington, August 8, 1874.

SIR: I have the honor to transmit herewith the report of the board of Navy officers appointed to inspect the steamships City of Peking and City of Tokio.

Very respectfully, &c.,

WM. REYNOLDS,
Acting Secretary of the Navy.

Hon. J. W. MARSHALL,
Postmaster-General.

Board of naval officers to the Postmaster-General.

NAVY-YARD, *New York, August 7, 1874.*

SIR: In obedience to your order of the 5th instant, inclosing communication from Postmaster-General, of same date, we have respectfully to report:

That we have made a careful inspection of the steamships City of Peking and City of Tokio, under contract with the Post-Office Department for mail-service between San Francisco and Hong-Kong, via Yokohama, and find that in construction and equipment that these vessels "are of the tonnage required by the act of June 1, 1872; are built of iron, in the most substantial manner, and fitted with engines both in design and strength to insure safety and durability, and are so constructed as to be readily adapted to the armed naval service of the United States, in case of war, and are wholly of American manufacture."

And we have further to state that in all the various details of appurtenances requisite to make them vessels of the first class, as in apparatus in case of fire, for pumping of bilge, in boats and all equipments needed, that they are fully and amply furnished, and, in point of construction, general arrangement, machinery, &c., not only well adapted for the mail-conveyance intended, but prove conclusively the ability and skill of American ship and engine builders to construct vessels equal to those built in any part of the world for speed and safety in postal service.

Very respectfully, your obedient servants,

R. W. SHUFELDT,
Captain, U. S. N.
 W. S. HANSCOM,
Naval Contractor, U. S. N.
 ALEX. HENDERSON,
Chief Engineer, U. S. N.

Hon. J. W. MARSHALL,
Postmaster-General, Washington, D. C.

ORDER OF THE POSTMASTER-GENERAL ACCEPTING STEAMERS.

It appearing from the within report of the board of naval officers appointed by the Secretary of the Navy to inspect the Pacific Mail Steamship Company's new iron steamships *City of Peking* and *City of Tokio*, at the port of New York, that the requirements of the act of June 1, 1872, have been fully complied with in their construction and equipment—the said steamships being of the required tonnage, built of iron, and wholly of American manufacture, and so constructed as to be readily adapted to the armed naval service of the United States in case of war—they are hereby accepted for the additional monthly mail-service between San Francisco, Japan, and China, to take effect on their arrival at the port of San Francisco to commence said service, with the distinct understanding, however, that as no appropriation was made by Congress at its last session for the additional monthly service on said route, no payment can be made therefor under the contract with said company until Congress shall have further legislated upon the subject.

J. W. MARSHALL,
Postmaster-General.

POST-OFFICE DEPARTMENT, *August 8, 1874.*

The Postmaster-General to the Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
Washington, D. C., August 8, 1874.

SIR: I have to inform you that the board of naval officers detailed by the Secretary of the Navy to inspect at New York the new iron steamships *City of Peking* and *City of Tokio*, tendered by your company under date of 8th July last for inspection and acceptance for service in carrying the United States mails between San Francisco and China and Japan, under the contract of August 23, 1873, have reported

to me, under date of 7th August instant, that the requirements of the act of June 1, 1872, have been fully complied with in their construction and equipment, the said steamships being of the required tonnage, built of iron, and wholly of American manufacture, and so constructed as to be readily adapted to the armed naval service of the United States in case of war.

The said steamships City of Peking and City of Tokio are, therefore, accepted for the additional monthly mail-service between San Francisco, Japan, and China, authorized by the act of June 1, 1872, to take effect on their arrival at the port of San Francisco, to commence said service with the distinct understanding, however, that as no appropriation was made by Congress at its last session for the additional monthly service on said route, no payment can be made therefor under the contract with your company until Congress shall have further legislated upon the subject.

I am, very respectfully, your obedient servant,

J. W. MARSHALL,
Postmaster-General.

RUSSELL SAGE, Esq.,

President of the Pacific Mail Steamship Co., New York City.

Hon. J. G. Cannon to the Postmaster-General.

TUSCOLA, ILL., August 6, 1874.

Hon. J. M. MARSHALL, Washington, D. C. :

Will you have kindness to send me copy of any opinion of Attorney-General touching last Pacific Mail subsidy, semi-monthly line of steamers, San Francisco to Peking, with statement of any action taken by your Department in the premises.

Yours, truly,

J. G. CANNON.

The Superintendent of Foreign Mails to Hon. J. G. Cannon.

POST-OFFICE DEPARTMENT, OFFICE OF FOREIGN MAILS,
Washington, D. C., August 31, 1874.

SIR: I have the honor to transmit herewith, in compliance with the request made in your letter of the 6th instant, copies of the following papers in relation to the additional monthly mail-service between San Francisco and Japan and China, viz :

1. Opinion of the Attorney-General, dated August 3, 1874.
2. Report of board of naval officers appointed to inspect steamships City of Peking and City of Tokio, dated August 8, 1874.
3. Order of the Postmaster-General accepting said steamers, dated August 8, 1874.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFORD,
Superintendent.

Hon. J. G. CANNON,
Tuscola, Douglas County, Illinois.

Acting Superintendent of Foreign Mails to the Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT, OFFICE OF FOREIGN MAILS,
Washington, D. C., October 6, 1874.

SIR: I am directed by the Postmaster-General to request that you will please report to this Department for his approval a schedule, arranged and adopted by your company, fixing the days and hours of arrival at and departure from the respective terminal and intermediate ports of the steamers of the United States and China Mail Steamship Line.

I am, very respectfully, your obedient servant,

RICHD. KELLY,
Acting Superintendent.

RUFUS HATCH, Esq.,
*Vice-President and Managing Director P. M. S. S. Co.,
59 and 61 Wall Street, New York City.*

Pacific Mail Steamship Company to the Acting Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall Street, New York, Oct. 10, 1874.

DEAR SIR: I am in receipt of your letter No. 33067, and in reply beg to hand you herein a schedule of the sailing-days of our steamers from San Francisco and Hong-Kong. Yokohama being a way-port, the steamers only call there, remaining long enough to discharge cargo—generally from two to three days.

You must bear in mind that our wooden side-wheel steamers are far excelled, in point of speed, by our new iron ships, one of the latter having made the trip from Yokohama to San Francisco in 17 days, whereas the others take from 20 to 25 days for the same service.

Under these circumstances you will readily see that it would be impossible for us to give you the days and hours of arrival at ports of destination.

You must also remember that we are performing mail-service every fourteen days between the United States and China and Japan, and are doing everything possible to accommodate the people of those countries.

The schedule we send is up to the 1st of January, and we intend to run our steamers by it, wind and weather permitting; but we cannot be responsible for typhoons, &c., which might render some modification necessary.

Your obedient servant,

RUFUS HATCH,
Managing Director.

RICHARD KELLY, Esq.,
Acting Superintendent of Foreign Mails, Washington.

Schedule of sailing-days referred to in the foregoing letter.

Leave San Francisco October 17th and 31st, November 14th and 28th, December 12th and 26th, and every fourteen days thereafter; leave Hong-Kong October 28th, November 11th and 25th, December 9th and 23d, and every fourteen days thereafter; leave Yokohama November 6th and 20th, December 4th and 18th, January 1st, and every fourteen days thereafter.

The Postmaster-General to the Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
Washington, D. C., October 12, 1874.

SIR: Referring to previous correspondence on the subject, I have to inform you that the schedule of sailing-days from San Francisco and from Hong-Kong and Yokohama of the steamers of your company, with the United States mails, up to the 1st of January, 1875, as reported in your letter of the 10th instant, is approved by this Department.

I am, very respectfully, your obedient servant,

MARSHALL JEWELL,
Postmaster-General.

RUFUS HATCH, Esq.,
Managing Director Pacific Mail Steamship Company,
Nos. 59 and 61 Wall Street, New York, N. Y.

The Postmaster-General to Hon. J. N. Tyner.

POST-OFFICE DEPARTMENT,
Washington, D. C., December 7, 1874.

SIR: I have the honor to inclose herewith, agreeably to your verbal request, a copy of the Attorney-General's opinion, dated August 3, 1874, on certain questions submitted in my predecessor's letter, dated July 22, 1874, in relation to the contract with the Pacific Mail Steamship Company, of New York, for the conveyance of an additional monthly mail between San Francisco, Japan, and China, authorized by act of Congress, approved June 1, 1872, and the obligation of this Department to accept, after the required inspection, the new steamships tendered by said company for the additional monthly mail-service on said route if found to comply with the requirements of the law.

I am, very respectfully, your obedient servant,

MARSHALL JEWELL,
Postmaster-General.

Hon. J. N. TYNER,
House of Representatives.

Superintendent of Foreign Mails to Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., December 10, 1874.

SIR: Referring to previous correspondence on the subject, I have to call your attention to that clause of the contract between this Department and the Pacific Mail Steamship Company, in which the company agrees "to arrange and adopt a schedule, with the approval of the Postmaster-General, fixing the days and hours of arrival at and departure from the respective terminal and intermediate ports," and to request that such schedule, for the year 1875, be furnished for the approval of the Postmaster-General at an early day.

I am, very respectfully, &c.,

JOSEPH H. BLACKFAN,
Superintendent.

RUFUS HATCH, Esq.,
V. P. and Managing Director P. M. S. S. Co.,
59 and 61 Wall St., N. Y.

Pacific Mail Steamship Company to superintendent of foreign mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall street, New York, December 12, 1874.

DEAR SIR: In reply to your favor of the 10th instant, we beg to state that the first departure of our ships from San Francisco for Japan and China, in the new year, will be Saturday, January 9, and every fourteen days thereafter; and the first departure from Hong-Kong for San Francisco, via Yokohama, will be Wednesday, January 6, and every fourteen days thereafter.

Yours, truly,

PACIFIC MAIL S. S. CO.,
By THEO. T. JOHNSON,
Secretary.

Hon. JOS. H. BLACKFAN,
Superintendent of Foreign Mails, Washington.

The Postmaster-General to Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
Washington, D. C., December 15, 1874.

SIR: I have to acknowledge the receipt of your letter of the 12th instant, advising me that the first departure of the steamships of your company from San Francisco for Japan and China for the year 1875 will be Saturday, January 9, and every fourteen days thereafter; and that the first departure from Hong-Kong for San Francisco, via Yokohama, will be Wednesday, January 6, and every fourteen days thereafter.

I am, very respectfully, your obedient servant,

MARSHALL JEWELL,
Postmaster-General.

T. T. JOHNSON, Esq.,
Secretary of Pacific Mail Steamship Company,
59 & 61 Wall Street, New York, N. Y.

Pacific Mail Steamship Company to Superintendent of Foreign Mails.

OFFICE OF PACIFIC MAIL STEAMSHIP COMPANY,
59 and 61 Wall street, New York, December 24, 1874.

DEAR SIR: Referring to our letter to you of the 12th instant, we now beg to inform you that owing to the loss of the company's steamer Japan, we have been obliged to change our schedule of departures from San Francisco as follows: Great Republic will sail for Japan and China, January 2; Vasco de Gama will sail for Japan and China, January 16; Colorado will sail for Japan and China, January 30; City of Peking will sail for Japan and China, February 13; Alaska will sail for Japan and China, February 27, and every fourteen days thereafter.

Yours, truly,

RUFUS HATCH,
Managing Director.

Hon. J. H. BLACKFAN,
Superintendent of Foreign Mails, Washington.

Superintendent Foreign Mails to Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., December 26, 1874.

SIR: I have to acknowledge the receipt of your letter of the 24th instant, advising me of a change in the sailing-days of the steamers of your company from San Francisco for Japan and China.

I am, very respectfully, your obedient servant,
JOSEPH H. BLACKFAN,
Superintendent.

RUFUS HATCH, Esq.,
Managing Director Pacific Mail Steamship Company,
59 and 61 Wall Street, New York, N. Y.

Letter of Hon. J. Q. Smith, M. C., to the Postmaster-General.

HOUSE OF REPRESENTATIVES,
Washington, D. C., January 11, 1875.

SIR: Will you oblige me by informing me whether any contract has been entered into by the Postmaster-General, in pursuance of the law of 1872, with the Pacific Mail Steamship Company; and, if so, whether the company have complied with all the terms and conditions of that contract; and, if they have not, in what particulars they have failed.

Very respectfully,

J. Q. SMITH.

Hon. MARSHALL JEWELL.

Letter of the Postmaster-General to Hon. J. Q. Smith, M. C.

No. 33855.]

POST-OFFICE DEPARTMENT,
Washington, D. C., January 12, 1875.

SIR: I have the honor to inform you, in reply to your letter of the 11th instant, making inquiry on the subject, that a contract was executed with the Pacific Mail Steamship Company on the 29th of August, 1872, for the additional monthly service authorized by act of Congress approved June 1, 1872, and subsequently, on the 23d of August, 1873, a new contract was executed with said company for the same service, discharging and releasing from future responsibility the sureties under the original contract of 29th August, 1872, and substituting new sureties in their stead.

In reply to your further inquiry, "whether the company have complied with all the terms and conditions of that contract, and if they have not, in what particulars they have failed," I have to state that the act of June 1, 1872, authorizing this additional monthly service, provided that the contract therefor should be for a term of years from and after the 1st day of October, 1873, and the contract executed with the company stipulated that the additional monthly service should be commenced on the 1st of October, 1873, by American-built iron steamships of not less than 4,000 tons register, and to conform in all respects to the require-

ments and provisions of the third section of the act of June 1, 1872, and the advertisement of the Postmaster-General issued in accordance therewith. The company, however, failed to commence the additional monthly service on the 1st of October, 1873, as required by the contract, because, as was alleged, of unexpected difficulties which retarded the building of the new steamers; and that fact was communicated to Congress in the annual report of my predecessor, dated November 14, 1873.

Subsequently, in the month of July, 1874, the company requested the inspection and acceptance, under the contract of August 23, 1873, of their two new American-built iron steamships, the *City of Peking* and *City of Tokio*, built expressly for the additional monthly service authorized by act of June 1, 1872; but before taking action on the request for their inspection, the opinion of the Attorney-General was asked on the following points, viz:

1. Whether or not the contract, not having been annulled by the Postmaster-General, was an existing agreement, under which the new steamships tendered by the company should be inspected, and if found to comply with the requirements of the law, should be accepted for the additional monthly service;

2. Whether the continuance or abolition of the said additional monthly service was at the option of the Postmaster-General; or

3. Whether the contract has absolutely fallen by operation of law.

The opinions of the Solicitor-General and of the Attorney-General were rendered under date of August 3, 1874, to the general effect that the contract for the additional monthly service was still obligatory, and the company entitled to have the new steamships inspected, and, if accepted, placed in the additional mail-service, the continuance or abolition of which was not within the option of the Postmaster-General.

In accordance with this opinion, the steamships *City of Peking* and *City of Tokio* were inspected at the port of New York by a board of naval officers appointed for that purpose by the Secretary of the Navy, who reported that the requirements of the act of June 1, 1872, were fully complied with in their construction and equipments; whereupon an order was signed by the Postmaster-General, on the 8th of August, 1874, accepting the said steamships for the additional monthly service between San Francisco, Japan, and China, "to take effect on their arrival at the port of San Francisco to commence said service, with the distinct understanding, however, that as no appropriation was made by Congress at its last session for the additional monthly service on said route, no payment can be made therefor under the contract with said company until Congress shall have further legislated upon the subject."

I am, very respectfully, your obedient servant,

MARSHALL JEWELL,

Postmaster-General.

Hon. JOHN Q. SMITH,

House of Representatives.

Agent of Pacific Mail Steamship Company to the Postmaster-General.

NO. 18 THIRD STREET, N. E.,
Washington, January 15, 1875.

DEAR SIR: I have the honor to inform you that the Pacific Mail Steamship Company have adopted and will at once publish the sched-

ule for the departures, both from San Francisco and Hong-Kong, of their steamships for the year 1875, as per memorandum inclosed, which is in strict accordance with the letter of the existing contract, and carries out the verbal suggestions made to me by your good self a few days since. The official printed schedule I will furnish you in a few days, and shall ask your approval of the same.

I have the honor to be, your obedient servant,

W. P. TISDEL,

Agent Pacific Mail Steamship Company.

Hon. MARSHALL JEWELL,

Postmaster-General U. S. A.

Schedules of departures of Pacific Mail Steamship Company's steamers for 1875.

Leave San Francisco—

January 2.
January 16.
February 1.
February 15.
March 1.
March 15.
April 1.
April 15.
May 1.
May 15.
June 1.
June 15.
July 1.
July 15.
August 1.
August 15.
September 1.
September 15.
October 1.
October 15.
November 1.
November 15.
December 1.
December 15.

JANUARY 15, 1875.

Leave Hong-Kong—

January 13.
February 1.
February 15.
March 1.
March 15.
April 1.
April 15.
May 1.
May 15.
June 1.
June 15.
July 1.
July 15.
August 1.
August 15.
September 1.
September 15.
October 1.
October 15.
November 1.
November 15.
December 1.
December 15.

W. P. TISDEL,
Agent P. M. S. S. Co.

Order of the Postmaster-General of January 16, 1875, recognizing service of extra steamers.

Recognize service of extra steamers Colorado, Alaska, Granada, Nevada, Japan, Vancouver, Colima, Vasco de Gama, China, Lord of the Isles, and Altona, of the Pacific Mail Steamship Company, in transporting the United States mails between San Francisco and Japan and China, eleven outward and fourteen inward trips, from January 15, 1874, to

September 17, 1874, inclusive, at the sum of \$6,115.69, being the amount of sea-postages on the mails conveyed; and refer to Auditor to pay F. Alexandre, esq., president of the Pacific Mail Steamship Company, at Nos. 59 and 61 Wall street, New York, N. Y.

MARSHALL JEWELL,
Postmaster-General.

Special report, January 16, 1875.

Superintendent of Foreign Mails to the Pacific Mail Steamship Company
No. 33390.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., January 16, 1875.

SIR: I have to inform you that the Postmaster-General has recognized the service of extra steamers Colorado, Alaska, Granada, Nevada, Japan, Vancouver, Colima, Vasco de Gama, China, Lord of the Isles, and Altona, of the Pacific Mail Steamship Company, in transporting the United States mails between San Francisco and Japan and China, eleven outward and fourteen inward trips, from January 15, 1874, to September 17, 1874, inclusive, at the sum of \$6,115.69, being the amount of sea-postages on the mails conveyed, and that the same has been referred to the Auditor for payment to you at New York, N. Y.

The separate earnings of each steamer were as follows, viz:

1874.	Outward.	
Feb. 14—Colorado		\$224 14
Apr. 18—Alaska		253 19
May 16—Granada		255 01
May 23—Nevada		81 69
June 12—Japan		246 89
June 25—Vancouver		34 30
July 14—Colima		332 71
July 23—Vasco de Gama		10 29
Aug. 13—Colorado		348 95
Aug. 29—Japan		327 39
Sept. 17—Vancouver		296 24
Total		2,410 80
1874.	Inward.	
Jan. 15—China		\$611 45
Feb. 9—Vasco de Gama		164 71
Feb. 12—Japan		501 48
Apr. 27—Colorado		358 54
May 1—Vasco de Gama		113 19
June 18—Lord of the Isles		28 77
June 18—Vancouver		158 06
June 27—Alaska		389 62
July 10—Granada		130 20
July 11—Vasco de Gama		101 99
July 28—Altona		230 51
Aug. 24—Japan		470 61
Sept. 5—Vancouver		78 26
Sept. 9—Colima		367 50
Total		3,704 89

Recapitulation.

Outward	\$2, 410 80
Inward.....	3, 704 89
Total sea-postages	6, 115 69

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

F. ALEXANDER, Esq.,
President of the Pacific Mail Steamship Company,
Nos. 59 and 61 Wall Street, New York, N. Y.

Extract from letter of the postmaster of San Francisco to the Auditor for the Post-Office Department, referred to the Superintendent of Foreign Mails February 3, 1875.

POST-OFFICE, SAN FRANCISCO, CAL.,
January 22, 1875.

SIR: In pursuance of instructions contained in yours of the 12th instant, I herewith transmit to you a copy of the duplicate of mails received from China and Japan by the China Trans-Pacific Steamship Company's steamer Vancouver, which arrived here September 5, 1874.

In relation to this matter, you will allow me to state that the Vancouver was not in the service of the Pacific Mail Steamship Company when she arrived here, but came consigned to Messrs. Macondray & Co., agents of the China Trans-Pacific Steamship Company in this city, who transferred her to the service of the Pacific Mail Steamship Company by charter-party executed in this city September 11, 1874.

* * * * *

Yours, very respectfully,

JAMES COEY,
Postmaster.

Hon. J. J. MARTIN,
Auditor of the Post-Office Department,
Washington City, D. C.

Hon. J. N. Tyner, M. C., to Superintendent of Foreign Mails.

[Post-Office Department telegram.]

WASHINGTON, D. C., *January 23, 1875.*

From House of Representatives to J. Blackfan, Post-Office :

Have failures occurred in the Pacific Mail service to such an extent as to justify annulment of contract? Have they been frequent? Answer.

J. N. TYNER.

Superintendent of Foreign Mails to Hon. J. N. Tyner, M. C.

[Telegram.]

POST-OFFICE DEPARTMENT, OFFICE OF FOREIGN MAILS,
Washington, D. C. January 23, 1875.

Hon. J. N. TYNER, *House of Representatives :*

The contract for original monthly service on Japan and China Line stipulates "that the Postmaster-General shall have the power to determine it at any time in case of its being underlet or assigned to any other party, and that he may annul it for repeated failures, for violating the post-office laws of the United States, for disobeying the instructions of the Department, or for transporting persons conveying mail-matter out of the mails."

JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

Postmaster-General to the Hon. J. N. Tyner, M. C.

[Telegram.]

POST-OFFICE DEPARTMENT,
Washington, D. C., January 23, 1875.

Hon. J. N. TYNER, *House of Representatives :*

From the best information that can be obtained, and upon consultation with Mr. Blackfan, it appears that the Pacific Mail service, under the original contract, has been performed with as much regularity as could naturally be expected on so long a line; and, for that matter, I am unable to find any failures which can be counted as such. They have been paid up to this time for that regular monthly service ever since the contract has been in force, at the rate of five hundred thousand dollars per annum for twelve round-trips, and these trips have in all cases been performed, and we have the certificates of the postmaster at San Francisco to the fact. All the irregularities have been limited to a failure to sail on a specified day, but they have always sailed very nearly on the day promised, and have made a full trip always.

MARSHALL JEWELL,
Postmaster-General.

Superintendent of the Foreign Mails to the Pacific Mail Steamship Company.

No. 34044.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., February 3, 1875.

SIR: Referring to my letter No. 33890, of the 16th ultimo, reporting the recognition of extra service by steamers of your company, I have to inform you that it appears from a report just received from the postmaster at San Francisco, that on the 5th of September, 1874, the date upon which mails were received at San Francisco from Japan and China by the steamer Vancouver, said steamer was not in the service

of your company, but came consigned to the agents of the China Trans-Pacific Steamship Company, in San Francisco.

In consequence of this information, payment for the service named has been suspended until this Department is informed whether any other, and, if so, which of the steamers named in my letter of the 16th ultimo were not in the service of your company at the dates of the outward and inward voyages between San Francisco, Japan and China, stated therein.

I have also to request that you will furnish me with similar information respecting the following steamers sailing from and arriving at San Francisco as stated:

<i>Outward.</i>	<i>Inward.</i>
1874.	1874.
Oct. 19. Vasco de Gama.	Oct. 2. Vasco de Gama.
Dec. 12. Vancouver.	Nov. 30. Vancouver.
	Dec. 22. Vasco de Gama.

I am very respectfully, &c.,

JOSEPH H. BLACKFAN,
Superintendent.

F. ALEXANDRE,
President Pacific Mail Steamship Company, Wall Street, New York.

Agent of the Pacific Mail Steamship Company to Superintendent of Foreign Mails.

NO. 18 THIRD STREET, NORTHEAST,
Washington, February 8, 1875.

DEAR SIR: Early in the month of January I furnished the Postmaster-General with a copy of the Pacific Mail Steamship Company's schedule for departures on China line, making our sailing dates in strict accordance with the requirements of the contract. Having received no acknowledgment, may I ask you to inform me whether or not this schedule has reached your Department?

Very truly, yours,

W. P. TISDELL, *Agent.*

Hon. JOS. H. BLACKFAN,
Superintendent of Foreign Mails.

Superintendent of Foreign Mails to the Agent of the Pacific Mail Steamship Company.

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., February 8, 1875.

SIR: I have to inform you, in answer to your letter of this date, that the proposed schedule referred to by you was duly received, but was not acknowledged at the time, on account of the following statement made in your letter to the Postmaster-General, transmitting the same, viz:

"The official printed schedule I will furnish you in a few days, and shall ask your approval of the same."

The Postmaster-General is absent from the city at present, but on his return I will call his attention to the matter.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

W. P. TISDELL, Esq.,
No. 18 Third street, Northeast, Washington, D. C.

W. P. Tisdel, agent Pacific Mail Steamship Company, to the Superintendent of Foreign Mails.

WASHINGTON, D. C., February 8, 1875.

DEAR SIR: Referring to your numbers 33890 and 34044, I have to inform you that the Department is in error in crediting the Pacific Mail Steamship Company with the service of the following steamships:

<i>Outward.</i>	1874.	<i>Inward.</i>	1874.
Vancouver	June 25	Vasco de Gama.....	Feb. 9
Vasco de Gama.....	July 23	Vasco de Gama.....	May 1
		Lord of the Isles.....	June 18
		Vancouver	June 18
		Vasco de Gama.....	July 11
		Altona	July 28
		Vancouver	Sept. 5

In regard to your last inquiry contained in your 34044, I beg to say that all the voyages, both outward and inward, of the Vasco de Gama and Vancouver, except the inward one of the Vasco de Gama, October 2, were made under the administration of the Pacific Mail Steamship Company.

In behalf of the company, I have to request that the entire matter of payment for extra service may be continued in suspension until Congress, or the courts, shall have decided as to the legality of the contracts for the semi-monthly service. We ask this as a matter of justice, holding as we do the official letter of the Postmaster-General recognizing the service, and also the opinion of the Attorney-General to the effect that the contract is a valid one.

I have the honor to be your obedient servant,

W. P. TISDEL, *Agent.*

Hon. JOSEPH H. BLACKFAN,
Superintendent of Foreign Mails.

Order of the Postmaster-General of February 12, 1875, rescinding order of January 16, 1875.

Rescind order of 16th January, 1875, recognizing the service of *extra steamers* Colorado, Alaska, Granada, Nevada, Japan, Vancouver, Colima, Vasco de Gama, China, Lord of the Isles, and Altona, of the *Pacific Mail Steamship Company*, in transporting the United States mails

between San Francisco and Japan and China, *eleven outward and four teen inward trips*, from January 15, 1874, to September 17, 1874, inclusive, at the sum of \$6,115.69, being the amount of sea-postages on the mails conveyed, and notify the Auditor thereof.

MARSHALL JEWELL,
Postmaster-General.

Special report February 12, 1875.

Superintendent of Foreign Mails to the Pacific Mail Steamship Company

No. 34188.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., February 12, 1875.

SIR: Referring to my letter No. 33890, of the 16th January last, I have to inform you that the Postmaster-General has made an order rescinding the order of the 16th January, 1875, recognizing the service of extra steamers Colorado, Alaska, Granada, Nevada, Japan, Vancouver, Colima, Vasco de Gama, China, Lord of the Isles, and Altona, of the *Pacific Mail Steamship Company*, in transporting the United States mail between San Francisco and Japan and China, *eleven outward and fourteen inward trips*, from January 15, 1874, to September 17, 1874, inclusive, at the sum of \$6,115.69, being the amount of sea-postages on the mails conveyed; and that the Auditor has been notified of the same.

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

Order of the Postmaster-General of February 13, 1875, recognizing service of extra steamers.

Recognize service of extra steamers Colorado, Alaska, Granada, Nevada, Japan, Colima, Vancouver, and China, of the *Pacific Mail Steamship Company*, in transporting the United States mail between San Francisco and Japan and China, *nine outward and seven inward trips*, from January 15, 1874, to September 17, 1874, inclusive, at the sum of \$5,195.61, being the amount of sea-postages on the mails conveyed; and refer to Auditor to pay *F. Alexandre, esq., president of the Pacific Mail Steamship Company at Nos. 59 and 61 Wall street, New York, N. Y.*

MARSHALL JEWELL,
Postmaster-General.

Special report February 13, 1875.

Superintendent of Foreign Mails to the Pacific Mail Steamship Company.

No. 34190.]

POST-OFFICE DEPARTMENT,
OFFICE OF FOREIGN MAILS,
Washington, D. C., February 13, 1875.

SIR: I have to inform you that the Postmaster-General has recognized the service of extra steamers Colorado, Alaska, Granada, Nevada,

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Japan, Colima, Vancouver, and China, of the Pacific Mail Steamship Company, in transporting the United States mails between San Francisco and Japan and China, nine outward and seven inward trips, from January 15, 1874, to September 17, 1874, inclusive, at the sum of \$5,195.61, being the amount of sea-postages on the mails conveyed; and that the same has been referred to the Auditor for payment to you at New York, N. Y.

The separate earnings of each steamer were as follows, viz :

1874.	<i>Outward.</i>		1874.	<i>Inward.</i>	
Feb. 14.	Colorado	\$224 14	Jan. 15.	China.....	\$611 45
April 18.	Alaska	253 19	Feb. 12.	Japan.....	501 48
May 16.	Granada	255 01	April 27.	Colorado	358 54
May 23.	Nevada	81 69	June 27.	Alaska.....	389 62
June 12.	Japan.....	246 89	July 10.	Granada	130 20
July 14.	Colima.....	332 71	Aug. 24.	Japan.....	470 61
Aug. 13.	Colorado	348 95	Sept. 9.	Colima	367 50
Aug. 29.	Japan.....	327 39			
Sept. 17.	Vancouver ...	296 24			
Total		2,366 21	Total		2,829 40

RECAPITULATION.

Outward	\$2,366 21
Inward.....	2,829 40
Total sea postages	5,195 61

I am, very respectfully, your obedient servant,

JOSEPH H. BLACKFAN,
Superintendent.

F. ALEXANDRE, Esq.,
President of the Pacific Mail Steamship Company,
Nos. 59 and 61 Wall Street, New York, N. Y.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1875.—Ordered to be printed.

Mr. MORRILL, of Vermont, from the Committee on Finance, submitted the following

REPORT:

The Committee on Finance, to whom were referred various Senate bills, proposing to establish mints, or branch-mints, at Chicago, Omaha, Saint Louis, Indianapolis, and Cincinnati, make the following report :

It appears by memorials and various documents presented to the committee, together with the oral statements made by several gentlemen in behalf of their respective localities, that a branch-mint, to be located at some central part of the West, in the valley of the Mississippi, is actually required, and would be exceedingly useful in the coinage of silver. The arguments presented show, however, a considerable difference of opinions, if not of facts, as to the respective merits of the respective localities. One of the first questions which arises is that of economy as to the cost of freight. Where the ores, coal, and sulphuric acid can be brought together at the cheapest rates, other things being equal, there would seem to be the appropriate place for reducing the ores to coin or bullion. But, then, we are bound to consider the scarcely less important collateral questions, such as the necessary amount of capital required to handle and to hold the ores while in the process of separation and conversion into bullion or coin; the most favorable point of distribution and ultimate circulation of coin; and the facilities for the immediate establishment of a branch-mint. These questions involve a wider and more careful examination of the facts than is possible to be given by any committee at the present session of Congress, and it is of great importance when the question is decided that it shall be decided so as to promote the highest and lasting interests of the country.

The information now before the committee does not permit them to reach a conclusion of the matter, very properly regarded in several States with considerable interest, without some doubt as to which of the competing points will best promote the permanent public interests, and they therefore recommend the adoption of the following resolution, viz :

Resolved, That, as it appears expedient to establish a branch-mint for the coinage of silver, the President of the United States be requested to institute inquiries as to the proper place for the establishment of a branch-mint at some point in the Western States, or in the Mississippi Valley, taking into account all questions of economy and facilities of distribution, and report upon the same at the commencement of the next session of Congress.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1875.—Ordered to be printed.

Mr. MERRIMON submitted the following

REPORT:

[To accompany bill S. 1352.]

The Committee on Claims, to whom were referred the memorial and accompanying papers of Gallus Kirchner, of the State of Indiana, have had the same under consideration, and make this report:

The memorialist, on the 21st of July, 1864, contracted to deliver a quantity of stone to the United States, for the purpose of constructing the main arsenal-building at Indianapolis, in the State of Indiana. He delivered much of the stone, and much that was not used in the construction of the arsenal, but was used for other purposes. For a part of the stone he received pay; for another part he did not, and he brought his suit in the Court of Claims. That court awarded him judgment for a part of the money he insisted was due to him in that behalf. But the proof as to the quantity of stone delivered by the memorialist was not satisfactory, and the court only gave judgment for such amount as appeared to be certainly due. The court say, in their opinion:

The precise quantity of stone thus delivered is not shown by the proof, but it abundantly appears that he delivered more than the 1,500 cubic yards required of him in the contract. The books of the railroad company over whose line of road the rock were shipped show that 442 car-loads were shipped under the second contract; and the proof establishes that each car-load averaged in gross $4\frac{1}{4}$ cubic yards, making in the aggregate 1,989 yards in gross. The claimant has been paid for $1,224\frac{1}{4}$ cubic yards, and the balance remains unpaid. But this result rests on the average estimate in gross of each car-load shipped from the quarry, and it is impossible for the court to fix with absolute accuracy the specific quantity of stone delivered by the claimant. But vague as the proof is in this respect, it is certain that he delivered under this contract the full amount of 1,500 yards called for in it; and for this amount, less the $1,224\frac{1}{4}$ yards for which he has been paid, he should recover. The stone delivered were all "dimension stone," and by the terms of the contract they were to be paid for at \$5 per cubic yard, which gives for the 275 $\frac{1}{4}$ yards still unpaid for the sum of \$1,377.50, for which judgment will be entered.

Judge Loring, dissenting, says:

I think in this case it is shown that the petitioner has been paid for all stone accepted under the contract and used in the arsenal-building. But the evidence also shows that stone required for the building was used in various ways by the United States, but how much so used is not shown, and as the burden of proof of that is on the petitioner, I think he is not entitled to judgment had, but that his case should be remanded to the docket for evidence. (See 7 Nott & Huntington, 579, *et seq.*)

The memorialist further states that he is a foreigner, and not well acquainted with the English tongue, and did not understand the nature and terms of the contract which he entered into with the Government

to deliver the stone, and that he agreed to deliver the same for less than he could afford, whereby he lost a large sum of money.

The committee think that the memorialist is entitled to some measure of relief, but they are not willing to determine what this is. They think that the case is one in which the Government should be heard. The committee therefore recommend that the whole matter be referred to the Court of Claims, with directions to hear, try, and determine the same according to law, as if the said claim were not bound by the statute of limitations, and report a bill accordingly.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

R E P O R T :

[To accompany bill H. R. 4763.]

The Committee on Pensions, to whom was referred the bill (H. R. 4763 granting a pension to Lafayette Briggs, submit the following report :

Briggs was a private in Company A, First Wisconsin Battery, Light Artillery, and was made prisoner at Cumberland Gap, and after his release was sent to hospital at Columbus, Ohio. His claim is that while at Cumberland Gap he was, in consequence of his hardships and exposure to cold, deprived of the loss of his eyesight—in one eye wholly, in the other mostly. This claim is supported by the evidence of Edwin E. Stewart, second lieutenant; H. B. Laflin, M. D.; W. Hobbins, M. D., the State surgeon of the battery, and the certificates of the county officers of Houston County, Minnesota.

At Camp Chase hospital, Briggs was treated for endocarditis and chronic bronchitis, and was discharged the service February 3, 1863, because of the former. The State surgeon (Hobbins) attended on him at Cumberland Gap, and his evidence is explicit that Briggs's trouble then (in August, 1862,) was acute inflammation of the eyes, and that it was contracted by the soldier in the line of duty, in consequence of cold, exposure, and severe labor. Cumberland Gap was evacuated about 28th of September, and the hospital-records lost.

It is reasonably well proved that Briggs's eyes were good when he entered the service. They are as bad as they well could be now.

The committee recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1875.—Ordered to be printed.

Mr. OGLESBY submitted the following

R E P O R T :

[To accompany bill H. R. 4769.]

The Committee on Pensions, to whom was referred the bill (H. R. 4769) granting a pension to Mrs. Abraanna Dunn, widow of George B. Dunn, late a captain in the Seventeenth Regiment Maine Volunteers, report:

The evidence on file in the claim presented by Mrs. Dunn to the Commissioner of Pensions shows that her husband, Captain Dunn, enlisted January 31, 1865, served until June 2, 1865, when he was discharged because his services were no longer required, and because of a wound received in the arm, in action at Amelia Springs; that Captain Dunn received pension from July 10, 1865, until March 7, 1872, at the rate of \$20 per month. The widow applied for pension June 19, 1872; her claim was rejected because of the death of her husband from *phthisis pulmonalis*, which it was stated did not originate from his service as a soldier.

The only question presented in the case about which there is any doubt, is: Did the disease of which Captain Dunn died originate from his services as a soldier? The evidence is satisfactory that he was sound in health when he enlisted or volunteered; that he received a severe wound in the left arm at the battle above named; that the wound never healed, but continued to harass and weaken the soldier to the time of his death. The Pension-Office continued his pension to him for this reason until his death. Meantime, *phthisis pulmonalis* intervened. We deem it necessary to reproduce the testimony of one witness here, only, to show the ground upon which the committee decide in favor of a pension to the widow. Doctor Eveleith testifies, "Soon after he returned home, disabled from the effect of his wound and exposure; he never recovered from the same; have been frequently called to see him and prescribe for him, from that time up to the time of his death, May 15, 1872; he died of *phthisis pulmonalis*, caused, in deponent's opinion, by the wound and exposure before mentioned; should judge, since his return from the Army, have called upon him and prescribed for him more than one hundred times, and saw him the day of his death; he had no other physician."

We, therefore, construe the doubt in this case in favor of the widow, if, indeed, there be ground for reasonable doubt that his death was caused by his services as a soldier, and recommend the passage of the House bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 4786.]

The Committee on Pensions, to whom was referred the bill (H. R. 4786) granting a pension to Sarah B. Howe, widow of Albion Howe, late first lieutenant of Fourth United States Artillery, and to Mary Cranston, widow of Arthur Cranston, late first lieutenant of Fourth United States Artillery, have had the same under consideration, and submit the following report:

The report of the Committee on Invalid Pensions of the House of Representatives states the case and the testimony correctly, but recommends a higher grade of pension than the respective rank of the husbands of claimants entitles them to.

The passage of the bill is recommended, with amendments defining the rank of the deceased officers, and leaving the rate of pension to be regulated by the general law.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1875.—Ordered to be printed.

Mr. ALLISON submitted the following

REPORT:

[To accompany bill H. R. 3720.]

The Committee on Pensions, to whom was referred the bill (H. R. 3720) granting a pension to Charles C. Haight, report as follows:

That Charles C. Haight enlisted August 26, 1861, as a private in Company G, Sixth Regiment West Virginia Volunteer Infantry; that he served until October 13, 1864, and was honorably discharged. Haight asks for a pension on account of loss of left eye, by bursting of a cap on the 22d of February, 1862, while firing a salute, under orders, on that day, while in camp near Parkersburgh, W. Va. Haight filed application for pension in 1865, but was unable to show from records in the War Department that there was any disability at the time of his honorable discharge, nor is there any evidence on file in the Surgeon-General's Office showing that he was treated in hospital for this wound; nor is there on file hospital-records of Parkersburgh, W. Va. His claim was rejected in 1871, because he did not prosecute the application as required by law. He claims that he furnished all the proof possible within the time; that he could not procure record-evidence of his disability; that the surgeon of the regiment was not present when he received the injury, and, also, that he cannot ascertain the place of residence of the surgeon. Mattingly, captain of Company G, and J. F. Drake, first lieutenant of Company G, both swear that they were present at the date of the injury, and personally know that Haight lost his left eye on the 22d February, 1862. Haight also swears to the loss at that time. These two witnesses and claimant constitute the only positive evidence in the case.

The committee are of opinion that there is sufficient proof of loss of left eye while in the line of duty, and therefore recommend the passage of the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1875.—Ordered to be printed.

Mr. ORIGIN submitted the following

REPORT :

[To accompany bill S. 1259.]

The Committee on Naval Affairs, to whom was referred the bill (S. 1259) to authorize the appointment of Walton Cable, as master in the Navy, on the retired-list, have had the same under consideration, and submit the following report :

The claimant is a citizen of New York, of sixty-three years of age, and represents that he was a pilot in the revenue-marine service at the port of New York for nine years, from September 1, 1863, until March 1, 1872, when he became unfitted to perform further duty by reason of physical disability contracted in the line of his duty in said service.

From the many testimonials on file, it appears that Mr. Cable is a man of good character, was faithful to every trust reposed in him, patriotic in the time of the country's peril, and that his present disability was incurred in said service.

There is no law or precedent authorizing the placing of his name on the retired-list, as he was never in the naval service. This last fact is sufficient in itself to govern the committee in their conclusion, for it would be most dangerous legislation, and highly injurious to the Navy, to place the name of any one on the retired list who never served in that branch of the service.

The committee recommend that the bill be indefinitely postponed, and that they be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1875.—Ordered to be printed.

Mr. HOWE, from the Committee on the Library, submitted the following

REPORT:

The Committee on the Library, to whom was referred the petition of Charles Lanman, praying the payment of damages sustained by an alleged infringement of a copyright, submit the following report:

The petitioner complains that the biographical sketches of Senators and Members inserted in the Congressional Directory are an infringement of his copyright in a publication known as "The Dictionary of Congress," and his petition asks for compensation for that infringement.

Recently he applied to the committee for leave to withdraw his papers.

There can be no objection to his withdrawing his claim; but the committee feel called upon to repel the suggestion that the Congressional Directory is an infringement upon any property-rights of the claimant. The Directory explains its own origin as follows:

The Congressional Directory was published by individuals from 1820 until 1864, inclusive, and copies were sold to Congress and to the Departments. It was sometimes two months after the commencement of a session before the first edition of the Directory was ready for delivery, and the work did not contain much of the varied information given in similar publications at the capitals of some of the States and at the seats of government in Europe.

At the commencement of the second session of the Thirty-eighth Congress, a joint resolution was passed unanimously ordering the compilation and publication of the Congressional Directory, under the direction of the Joint Committee on Public Printing. The joint committee, urged by Senators and Representatives, to give additional value to the work, examined upward of twenty publications of a similar nature, and adopted several features—among them statistical sketches of members of Congress. The form of these statistical sketches, which met the approval of the joint committee, was that which they found in a publication entitled "The House of Commons," which has been published annually at London, in its present shape, since 1852, and it has since been used as a model in the compilation of the Congressional Directory. The statistical sketches give the Senator, Representative, or Delegate's full name; home post-office address; place and time of birth; early education; collegiate education, if any, with date of graduating; professional studies; profession or business; all public offices held, with dates of holding them; their vote on their last election to Congress; the name of their opponent; the politics of each, and the vote of each when the election was by the people.

This information has been supplied by the members of Congress, in response to circulars sent them by direction of the Joint Committee on Public Printing, as it could not be obtained in any other way. No biographical work has ever given the politics of Congressmen, the names of their opponents when elected, or the votes given to each, although they have appeared at the close of each year in the valuable newspaper almanacs.

• Any person can obtain a copyright for a work by depositing a copy of the title-page with the Librarian of Congress and paying the stated fee. No attempt can be made to defend, under the copyright act, the plan of this Congressional Directory, as it is based

on numerous European publications of a similar nature, some of them dating back many years; neither is the collection of biographies of a class of public men an original idea, as scores of such collections have been published within the present century. But for the statistical sketches, obtained from original sources by the compiler, the protection of the copyright act can be claimed. It will, however, only be invoked when the original matter is republished imperfectly for gain. It was to prevent this that the Joint Committee on Public Printing directed the compiler to secure a copyright.

It is true that a few names are found in the Directory which are in the Dictionary also. That happens because some individuals who were in Congress when the last edition of the Dictionary was issued remained in Congress after the suspension of that work and after the commencement of the Directory.

It is probably true that some if not most of the facts found in the biography of an individual named in the Directory are found in the biography of the same individual when found in the Dictionary. That should always be the case when two authors publish lives of the same person. It should be conspicuously the case in such brief sketches as the Dictionary and Directory contain. But copyright does not secure the biographer any exclusive property in the incidents in the life of his subject; it protects him only in what he says of those incidents.

There is no ground for the pretense that the sketches in the Directory are pirated from the Dictionary.

It is within the knowledge of members that they severally furnish the clerk of printing records with the facts contained in each successive edition of the Directory. In the particular case of Senator Boreman, which is cited by the claimant as an instance of infringement, it appears, not only that the facts mentioned in the Directory were obtained from the Senator and not from the Dictionary, but that those facts were inserted in three editions of the Directory before the Dictionary for 1869 appeared.

The committee therefore ask to be discharged from the further consideration of the petition, and recommend that the petitioner have leave to withdraw his papers.

C

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1875.—Ordered to be printed.

Mr. FLANAGAN submitted the following

REPORT:

[To accompany bill S. 1264.]

The Committee on Post-Offices and Post-Roads, to whom was referred the bill (S. 1264) referring the claim of the heirs of Chauncey M. Lockwood to the Court of Claims, submit the following report:

In the matter of the claim of the heirs of Chauncey M. Lockwood, mail-contractor on route No. 16637, the committee make the following report:

That on the 9th of March, 1868, the Postmaster-General advertised for proposals for transporting the United States mails over route No. 16637, from Salt Lake City to Dalles, in the State of Oregon, a distance of 875 miles, six times per week.

That on the 15th day of the succeeding June the bids filed under these proposals were opened, and Chauncey M. Lockwood, now deceased, was awarded the contract at an annual compensation of \$149,000, the contract requiring the service to begin on the 1st day of October, 1868, thus allowing the contractor the intervening time between the 15th day of June and the 1st of October, 1868, to arrange for carrying his contract into execution.

That immediately on the award the contractor, C. M. Lockwood, began his preparations, and on the 1st day of October had placed upon the line of the route a full supply of horses, consisting of several hundred head, with all necessary vehicles for a due and proper discharge of the service.

In the mean time, Congress, on the 25th day of June, 1868, passed an act repealing the provisions of the fourth section of the act of March 25, 1864, by which mail-matter from the Eastern States, and destined for the Pacific States and Territories, was sent to its destination by sea, unless prepaid by letter-postage. The object of this law of 1864 was to lighten the overland mail and to enable the Post-Office Department to secure its transportation at reduced cost. The effect of its repeal was to require all mail-matter to be sent across the continent by land, and to increase the aggregate bulk and weight of the mail to an amount more than double what it had been prior to that time. This provision, however, was not to take effect until the following October—the intention being, no doubt, to advise the contractors under the new lettings of the additional burdens which they would be called upon to assume.

Mr. Lockwood, the petitioner, was not informed or advised by the Department of this change, and had no knowledge of it. His first information was derived through the arrival of extraordinary amounts of

mail, and the necessity for its safe and speedy delivery. He immediately increased his means of transportation, requiring about double the number of animals and an entire change of vehicles, over most of his route, and, as appears by the evidence, has regularly and faithfully performed the service. To do this required a large additional outlay of money for stock and stages, and proportionately increased the number of his employés, the cost of forage, and the other incidental expenses of his contract.

It is a fact to be mentioned to the credit of the contractor that, in no instance, did he fail to deliver the mail on schedule-time, and that, notwithstanding the route was nearly nine hundred miles in length, running over mountain-ranges and a desert country, and that the State of Oregon and the Territories of Idaho and Washington were supplied with their mails over this route.

Under this state of facts, the committee are of opinion that the petitioner is entitled to relief. The contractor who had agreed to carry the mail from Salt Lake City eastward, under the proposals made and under a bid awarded at the same time that this claimant became a contractor, upon learning of the change to be made in the amount of the mail-matter to be transported over the eastern end of the overland line, threw up his contract, and refused to attempt its execution. Some idea of the difference which this change made in the cost of carrying the mail may be disclosed by the fact that the Department let the eastern line in June at a compensation of \$332,000, and, when the contractor refused to perform the service, *was compelled to pay, under a special contract, a much larger sum for the service.*

An investigation was had by Congress into the matter at the time, and the action of the Department in paying the larger amount justified on the ground that Congress having changed the line after the contract was made, the contractor was at liberty to refuse its execution. Mr. Lockwood having, however, gone forward and performed the service notwithstanding the new burden placed upon his route, ought, in the opinion of the committee, to be paid a reasonable addition for the labor imposed upon him, and in order that exact justice may be done, we report back the bill referred to the committee and recommend that it do pass.

O

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. FRELINGHUYSEN, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary, to whom was referred the petition of citizens of De Soto County, Mississippi, praying the return of taxes assessed and collected on cotton for the years 1865, 1866, 1867, 1868, and 1869, respectfully report :

That the petition of citizens of De Soto County, Miss., asks the return of the tax on cotton, for the years 1865 to 1869, inclusive, on the grounds that the tax was unjust and oppressive, and because it was unconstitutional.

The Government of the United States has been obliged to raise a large amount, by taxation, to defray the expenses of the recent war. The property and industries at the North have been heavily taxed; and as cotton constituted the principal wealth of the South, the committee see no reason why a tax upon it should be considered unjust or oppressive.

The cotton-tax has been claimed to be unconstitutional, for the following reasons:

I. Because it is equivalent to a direct tax, and is not laid according to population.

When the Constitution was framed, the larger States were careful to provide that direct tax should be according to population, for fear that a tax upon land, by the acre, might impose large and unequal burdens on them. Hence the Constitution, article 1, section 2, provides that direct taxes shall be apportioned among the several States according to an enumeration made every ten years. But the cotton-tax is not a direct, or a land tax. It is a tax on the productions of land. It is an excise on cotton, severed from the land, in bale and by the pound.

II. The tax is claimed to be unconstitutional, because it is not uniform.

The 8th section of article 1 provides that all excises shall be uniform throughout the United States.

This tax is uniform. It is the same whether the cotton be in Maine or in Louisiana. The fact that cotton is grown at the South, and not at the North, creates no want of uniformity, any more than the fact that manufactures are found at the North more than at the South renders a tax on the products of the northern mechanic partial and local. Any one can raise cotton, and, as a matter of fact, northern capital is invested in its production. The excise is uniform.

III. It is said the tax is unconstitutional, because it is a tax on exports.

The 9th section of article 1 provides that "no tax or duty shall be laid on articles exported from any State."

The fact that any article may be or is largely exported does not make the article an "exported article." This is simply a tax on cotton. The object of the Constitution was to prohibit a tax on exportation, and this tax is not that.

The committee therefore recommend that the petition be not allowed.



IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. FRELINGHUYSEN, from the Committee on the Judiciary, submitted the following

REPORT :

The Committee on the Judiciary, to whom was referred the petition of John Randolph, administrator of the estate of Sarah A. Lord, widow of Wm. A. Lord, for the passage of a joint resolution removing the bar of limitation in a certain case for damages arising from illegal seizure and sale of cotton, and referring said cause to the Court of Claims, have had the same under consideration, and respectfully report :

I. It appears that Mrs. Lord, during the rebellion, she then being Miss Camp, was loyal, and rendered some service to the Union Army.

II. That April 13, 1863, in Floyd County, Georgia, she purchased 38 bales of cotton of J. L. Camp for \$13,922.25; that January 3, 1864, she purchased of J. C. Pemberton, Rome, Ga., 42 bales of cotton for \$15,180.20; that February 2, 1864, in Gordon County, Georgia, she purchased of J. C. Pemberton 350 bales of cotton for \$17,500; making, in all, purchases of cotton to the amount of \$46,672.

III. It does not appear that those she purchased of were loyal.

IV. This cotton is said to have been seized by Maj. A. C. McCreedy, Tenth Ohio Cavalry, and turned over to Capt. Geo. E. Alden, quartermaster, and that the cotton was finally sold, and the proceeds paid into the Treasury.

The petition is, that the administrator of Mrs. Lord, she having died, may bring suit in the Court of Claims, notwithstanding the right to do so has been barred by the statute of limitations for five years. The only reason given for not bringing suit in time in the Court of Claims is, that Mrs. Lord was pressing her claim in Congress, in ignorance of her remedy in that court.

The reason for not bringing suit could be urged by many claimants. The lapse of time may prevent the Government from being able to follow the cotton, and ascertain the true character of the transaction.

Granting the relief sought in this case would be equivalent to a repeal of the limitation on suits.

It is recommended that the petition be disallowed.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. HITCHCOCK submitted the following

REPORT:

[To accompany bill S. 1256.]

It appears that the Alexandria Canal Company, a corporation created by act of Congress May 26, 1830, was authorized to build and maintain a canal from Georgetown to Alexandria, specific authority being given in said act to carry the canal across the Potomac by means of an aqueduct crossing the river at Georgetown.

By the provisions of section 12 of the above-mentioned act the canal company is prohibited from imposing any other tolls for the use of the canal and works than those authorized in the act, *unless sanctioned by Congress*, and nothing in said act authorizes the collection of tolls for the passage of vehicles or foot-passengers over the Aqueduct Bridge.

At the first session of the Twenty-second Congress the sum of \$100,000 was donated by Congress to the canal company, to be applied to the construction of the aqueduct across the Potomac at Georgetown, which appropriation was so expended under the supervision of Government officials.

By an act of Congress of March 3, 1837, the Secretary of the Treasury was authorized to loan \$300,000 to the canal company in order to complete the canal to Alexandria, to secure the payment of which loan the corporate authorities of Alexandria were required to deposit the stock held by them in said canal company in the hands of the Secretary of the Treasury, the same to be transferred by proper instruments of conveyance, and to be held by said Secretary in trust, and to be sold under certain circumstances, which stock said authorities failed to transfer and deposit.

By an act of Congress of July 27, 1868, the Aqueduct Bridge, with the road-bridge thereon, was declared a lawful structure, and authority was granted to the lessees to fix the rates of tolls—not to exceed certain rates—for crossing said bridge, the power to amend and repeal the act being expressly reserved to Congress.

The foregoing presents briefly the legislative history of the canal company.

During the war the bridge was used by the United States military authorities as a road-bridge, and it continued to be used until some time in the year 1866 or 1867, when a lease was entered into by the president of the canal company by the terms of which all of the canal and its works were leased for a period of ninety-nine years, the canal company receiving the nominal consideration of one thousand dollars per annum.

This lease, it is claimed, the president of the canal company was duly authorized and directed to make by a vote of a majority of the stockholders of the company, and particularly so authorized and directed by the corporate authorities of the town of Alexandria; said authorities voting

upon and representing the very stock which was pledged to the Secretary of the Treasury for the loan of \$300,000 advanced, as already stated.

The lessees, after entering into possession of the canal and works, restored the aqueduct to its original use, but provided a roadway for travel across the bridge by making a deck or floor over the Aqueduct trunk, excepting at the Virginia end of the bridge, where a short trestle-bridge, crossing the canal, was constructed.

The entire expenditure upon the new work required for the roadway above described is estimated by competent persons not to have exceeded \$25,000.

The annual income derived from travel across the bridge can only be *estimated*, as the canal company or its agents make no published returns of said income. Careful and long-continued observation, however, of the amount of travel passing over the bridge warrants the statement that, allowing for expenses of collections, repairs, and renewals, the net annual income from this source will reach a sum equal to at least 50 per cent. upon the cost of the roadway-structure.

The present rates of toll for crossing the bridge are not only extortionate but unjustifiable. As has been shown, Congress furnished the money which built the bridge. Subsequently it loaned to the canal company a sum, yet unpaid, nearly sufficient to build the canal to Alexandria. In fact the General Government has supplied the greater part of the money which could have been honestly expended in the construction of the whole of the company's works from Georgetown to Alexandria; and to-day, by reason of its loan and accrued interest thereon, the Government holds a lien upon those works amounting to a fraction less than one million of dollars. It may be assumed, therefore, that the Government has an *'equitable'*, as well as legal, right to say what tolls shall be established for the use of any of the canal company's works.

Now, the tolls for crossing bridges should be fixed with some reference to the character of the particular structure, and to the amount of travel passing over it. The Aqueduct Bridge is about 300 yards in length. It is on the leading highway from Washington and Georgetown to Arlington Cemetery, and to Alexandria and Fairfax Counties, Virginia. This highway divides with the county road leading to the Long Bridge—getting much the larger share—all of the business and travel coming into this District, other than by rail, from the counties named. Yet, in the face of these facts, the unreasonable toll of fifty cents is exacted for every two-horse conveyance crossing and returning upon the bridge.

And there are further considerations: The Long Bridge has been practically surrendered, by authority of Congress, to railroad uses. Thus the Aqueduct Bridge is rendered the only really safe outlet for vehicles across the Potomac. Hence it can readily be understood that one effect of the extravagant tolls has been to diminish the value of property, and check the growth of the neighborhood south of the Potomac—a neighborhood from which heretofore our markets have been largely supplied.

And, finally, this corporation, created by and owing nearly all of its possessions to the bounty of the General Government, does not suffer even the patriotic or mourning visitor to the national cemetery at Arlington to escape its legalized extortion.

The committee therefore recommend the passage of the accompanying bill, believing it to be entirely just in its provisions, and the rates therein fixed to be reasonable and amply remunerative.

IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. DENNIS, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill H. R. 3750.]

The petitioner, E. Boyd Pendleton, was appointed collector of internal revenue for the fifth district of Virginia in May, 1866, and entered upon the discharge of the duties of the office on the fifth of the following month. R. W. Hobson was in office as a deputy collector, having been appointed by the petitioner's predecessor, and being in charge of the office at Danville, Va. Hobson stood high in the community, and being somewhat experienced, the petitioner, at the request of the leading and responsible citizens of Danville, retained him as his deputy at Danville, and took bond for him with five apparently responsible sureties in the sum of \$25,000.

In July, 1867, the Commissioner of Internal Revenue called the attention of the collector to the affairs at Danville, and suggested personal attention, which was repeated more specifically early in August. The chief office of the district was at Lynchburgh, a considerable distance from Danville. The petitioner responded by going to Danville, and found that charges were made against Hobson on account of his personal conduct, but no attack upon his integrity. The result of this visit and investigation was reported to the Department on the 16th of August. The Commissioner examined into the charges against Hobson and held them not to be sustained. There was no allegation of default. The Department advised petitioner, on 29th August, 1867, that he was at liberty to accept the resignation of Hobson, but Hobson was unwilling to resign while charges were pending.

The principal men at Danville, and among them the sureties of Hobson, desired him to be retained. There was also a difficulty about procuring a suitable successor, and it does not appear that any charge of want of integrity was preferred against Hobson. Matters continued without further complaint from the Department. In the summer of 1868 the petitioner became satisfied that the office at Danville was negligently managed, and as soon as a proper person could be found, Hobson was removed, and an examination of his affairs instituted. It was discovered that he was a defaulter to the extent of \$26,446.28. The petitioner came to Washington, and was advised at the Department to commence legal proceedings. Hobson and sureties were sued on their bond, and judgment obtained, but the sureties turned out to be insolvent, and nothing has ever been recovered. He was also arrested under the criminal statutes, and held to bail by the United States commis-

sioner at Richmond, in the sum of \$5,000, which he forfeited, and has fled from the country.

There is no averment or insinuation anywhere that the petitioner was otherwise than a man of the strictest integrity, but officers of the revenue certify strongly in his favor.

It is now well established by precedents that Congress will relieve the principals for the embezzlements and defaults of their subordinates in cases where the former are without fault. The cases are too numerous and prominent to require citation.

If the petitioner in this case should not be relieved, it is solely on the ground of negligence, for no other possible reason can exist.

The district was, territorially, quite extensive, and the principal office remote from Danville. Hobson stood high in the community, and his retention was earnestly solicited by prominent citizens. No charge of want of integrity was preferred. A letter directing investigation was written at Washington early in August and answered on the 16th, after investigation had been made. The response of the petitioner was within reasonable time, and it was found that the complaints wholly related to the personal habits of Hobson. It is true that he was not removed for nearly a year, during the whole of which time the Department was silent. The charge against him was not sustained as to his habits. So soon as petitioner felt satisfied that a change should be made, he removed Hobson, and, finding him a defaulter, he resorted to every legal remedy to recover for the Government and himself.

Considering all the facts and circumstances, the committee is of opinion that the petitioner exercised reasonable diligence, and that to relieve him it would not extend the principle already established in other cases. When the Government creates offices, the duties of which are to be exercised by deputies, those appointed as principals should be required to exercise the diligence exacted of men in their own affairs, and no more.

This obligation should rest upon the appointee as well in the selection of the person as in watching his manner of doing business. In this case the petitioner was exceedingly prudent in the selection, and it cannot be said that he failed in diligence afterward to an extent that should defeat the prayer of his petition.

The committee therefore recommend the passage of the accompanying bill.

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IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. HAMILTON, of Texas, submitted the following

REPORT:

[To accompany bill H. R. 1401.]

The Committee on Pensions, to whom was referred the bill (H. R. 1401) granting a pension to Penelope T. Heald, submit the following report:

The bill directs the Secretary of the Interior to place on the pension-roll the name of Mrs. Heald, as widow of Henry H. Heald, captain of the schooner Norman, and pay her a pension the same as if he had been a master in the United States Navy, from and after the passage of the bill.

The case was before the committee at the last session, and an adverse report was made. At that time there was nothing which was strictly evidence before the committee. There was a petition and a certificate of certain residents of Fall River, who represented themselves as owners of the schooner Norman; but neither paper was sworn to. The committee, however, assumed the facts to be true, as stated in those papers, and arrived at the conclusion that Mrs. Heald had not shown herself entitled to the special relief asked and given by the House bill. Since that time evidence has been supplied, and, on the 10th day of December, the bill was recommitted by order of the Senate, and the case has been again considered by the committee.

The facts as disclosed by the evidence are, briefly, as follows:

The schooner Norman, of which Capt. Henry H. Heald was master, under a charter for New Orleans, sailed from New York on the 18th of October, 1863, and arrived in the former city in fourteen days from New York, and after discharging her cargo of horses and pork, (being army supplies A,) was, by authority of the Government of the United States, ordered to Pensacola for a cargo of coal, and sailed the next day after her arrival in New Orleans. Four or five days afterward the schooner was boarded by a boat's company of about twenty men, who took the captain, officers, and crew—seven men in all—prisoners, beached the vessel, and burned her, and carried the prisoners first to Fort Morgan, in Mobile Bay; thence to Mobile; thence to Cahawba, where they were kept two and one-half months; thence they were taken to Libby prison, and, after detention there about three weeks, they were removed to Andersonville prison in Georgia. Two weeks after this, the chief mate died from exposure and fever; five months later one of the foremast hands died, and soon after three more succumbed to the rigors of prison life—making five in all who died within the period of seven months after their transfer to this noted prison. Of the whole ship's company only the master and the witness, John Borden, now survived;

and in March, 1865, the captain himself, after an imprisonment of about a year and six months at that place, died, leaving the witness the only survivor of the officers and crew of the schooner at the time of her capture.

It appears from the certificate above mentioned that the owners of the schooner have been paid for their vessel by the Government.

The testimony relied upon now is the affidavit of John L. Borden, who was second mate of the schooner on her trip to New Orleans from New York, and when she was captured, and represents himself as the only survivor of the officers and crew of the ill-fated vessel. He states explicitly that "when the schooner was chartered in New York the charter was only for the voyage to New Orleans, and that the Government authority compelled the captain to proceed to Pensacola with his vessel to bring a cargo of coal to New Orleans." He then gives a detailed account of the capture of the schooner by a rebel cruiser, the imprisonment and death of Captain Heald and all the others except himself, constituting officers and crew of the schooner. Upon this state of facts the claimant insists that her husband was compulsively in the service of the United States when captured, and at his death by consequence.

It is not contended that this brings the case within the letter of the pension-laws, and hence no application has been made at the Pension-Office. But it is claimed with great earnestness that the case is within the spirit of the law, in that he, being in the service of the United States by impressment, or an order tantamount to that, and being taken prisoner and having died in consequence of the severities of prison life, his widow is entitled to be treated, in the administration of the pension-law, as if he had been commissioned in the service at the time of his capture.

The testimony as to the service for which the schooner was chartered before leaving New York, to the mind of the committee, is not conclusive. Only one witness testifies on that point or any other point in the case, and he an illiterate and perhaps interested party through his relationship to the owners of the vessel, if not a stockholder in her. Mr. Borden, the witness, was second mate of the schooner, and signs his affidavit with a cross-mark, yet he swears positively that the schooner was chartered in New York only for the voyage to New Orleans, and that the Government authority compelled the captain to proceed to Pensacola with his vessel.

If this statement be true, there must be some evidence of these transactions upon the records of the War Department. The original charter-party must have been in duplicate and filed among the quartermaster's returns as a voucher for the payment of the money. If no such evidence can be found, then it must be concluded that instead of the schooner having been chartered by the Government she was simply freighted or laden with Army supplies at stipulated rates, and at the same time guaranteed against capture by the enemy, else she never would have been paid for. Allowing the vessel was only chartered for the voyage to New Orleans, as stated by the witness, it is fair to presume that she was also chartered for the trip to Pensacola and back to New Orleans. The hazard was no greater than that already incurred. She passed over the same waters on the trip from New York. The captain may have been, and doubtless was, quite ready, for a proper consideration, to proceed to Pensacola for coal. But it is extremely improbable, in the opinion of the committee, that the vessel was *impressed* by any officer of the Quartermaster's Department.

It was not the habit of the Government to impress the property of

citizens into the public service. If at any time, or on any occasion, the quartermasters were without money, the credit of the Government was good, so that it could always contract for such supplies and transportation as the Army needed. There seems to have been no reason for the alleged impressment of the schooner, either because of the want of money or credit, or on account of the hazards of the service. But if this were established by the highest record evidence, it will hardly be contended that the Quartermaster's Department or any officer of the Army had the power, or attempted to exercise the doubtful authority of *impressing men*, as well as vessels, into so dangerous a service, or any service whatever. If the schooner was taken in defiance of law and under the protest of her master, it would seem to the committee to have been very unwise to place her under the command of the officer making the protest, for he would undoubtedly have steered her for New York or Massachusetts, where both men and property would have found protection against unauthorized seizures and enforced employment. Clearly it must have been in pursuance of a *bargain* that the captain of the schooner sailed for Pensacola, or, which is quite as likely, she was homeward-bound when captured, and the owners or underwriters, not having any recourse upon the Government, have set up the claim of impressment. If the owners of the vessel have been paid for the schooner on no better testimony than is here presented, the demand could not have been very closely scrutinized. According to the testimony of Mr. Borden, the schooner was not under charter to the Government at the time she was captured and destroyed; so that if the owners were guaranteed against loss by rebel cruisers, as the committee deem probable, in the charter-party for the voyage from New York to New Orleans, the Government was released from further liability on the completion of the voyage, unless the quartermaster at New Orleans rechartered the schooner for the voyage to Pensacola and back to New Orleans. If this be the fact, the committee can understand very readily the liability of the Government to the owners for the value of the vessel. There should be some evidence of transactions of this character found upon the records somewhere, and the parties prosecuting this claim should have looked them up before submitting their case upon the bare statement of an illiterate subordinate officer who could, in the nature of things, have known little more than the talk among the crew upon the deck of the vessel. More than one witness should be required to establish so gross a departure from the general rule in the Quartermaster's Department; and witnesses, too, who can read and understand what they testify to.

But the committee stoutly deny that the claim would come within even the spirit of the law, were the proof ever so clear, and of record; because, however the schooner may have been brought under the control of the Quartermaster's Department—if, in fact, she was under its control, her officers and crew must have *voluntarily* engaged for the voyage in which she was lost. It is quite impossible to conceive that *they* were *forced* into such a service. If not, then they were only employed by the Government at remunerative wages so long, as they might find nothing more profitable to do.

The committee, on the former hearing, decided unanimously not only that the evidence was insufficient to establish the allegations in the claimant's petition, but that she had no case, if they were fully proved. In their report on the case made to the Senate February 4, 1874, after alluding to the testimony then filed, and the absence of any statement even from the only survivor of those captured on the schooner, who was said to be living at Fall River, Mass., the committee say:

True, it could have but little influence in determining the result of claimant's application in the form in which relief is asked, because neither the vessel nor her officers and crew were in the service of the United States, though doubtless chartered by the Quartermaster's Department for general transport-service, with guarantee against capture or loss by the enemy. The officers and crew of the vessel were, in that case, in the service of her owners, and it is fair to presume at wages commensurate with the risk from rebel cruisers and other casualties. They were no more in the service of the Government than any other contractors for supplies for the Army or Navy, or for transportation by land or sea.

There is no evidence which would justify the passage of the bill, even if applicant's husband had been an officer of the Navy, because the imprisonment and death of Captain Heald and not proven, but if the facts, as alleged, were duly established, they do not bring the applicant within the scope of the pension-laws, which were intended to provide only for those in the military and naval service of the Government. To extend their provisions to persons, however meritorious or unfortunate, who may have suffered while fulfilling engagements with the Government, whether lucrative or otherwise, would open the door to a large class who were in one way or another engaged, during the rebellion, in supplying the wants of the Army and Navy, and who were, for the most part, working for themselves and not for the Government.

It will be seen, by an examination of the papers on file, that when claimant first petitioned Congress for a pension, her attorney, B. F. Winslow, of Fall River, writing to the Hon. James Buffinton, under date of January 27, 1872, says the claimant is not entitled by law to a pension, but her claim is a meritorious one. Captain Heald, says the writer of the letter, lost his life by reason of the rebellion; was taken prisoner by the enemy while *employed* to transport supplies for Government. Mr. Winslow seems to have considered it quite immaterial whether the vessel and her officers and her crew were *employed by contract* or *impressed* into the service of the Government; and he manifested so much confidence in the justice of the claim and the ability of the party to whom it was intrusted, to procure favorable action, that he did not deem it necessary to forward any testimony whatever. The bill passed the House without a particle of evidence, at least none came with it to the Senate or to the Committee on Pensions.

The committee have decided numerous cases of the same character during the present session and former sessions, uniformly against the prayer of the petitioners.

Since the foregoing report was prepared, the committee have been furnished from the office of the Third Auditor of the Treasury a full statement of the testimony upon which the owners of the schooner Norman established their claim against the Government for the value of their vessel, and the settlement of the same.

It appears when the said owners first filed their claim, they alleged, as the claimant in this case does, that the schooner was *impressed* at New Orleans, and that her officers neither made any agreement to any terms imposed, nor assumed any risk whatever; subsequent investigation, however, established the fact beyond dispute, that the schooner was chartered by Captain Heald to the Quartermaster's Department, at fifty cents per ton or \$40 per diem, and upon this testimony the Government paid for the schooner, having taken *the war-risk*. The settlement was made in 1870, the Government paying \$7,200 as the value of the schooner, which was divided between eleven shareholders, of whom claimant was one, representing two-sixteenths, her share being \$900. Yet she, two years after, files her petition to Congress alleging that the schooner was *impressed* into the service of the United States; and four others of the owners, Mr. Daniel Brown, Philip D. Borden, D. F. Brown, and R. C. Brown, join in the application of claimant, and certify to the statements made in the petition, adroitly concealing the most important fact in the case, qualifying their indorsement of the statements made in

the petition so as not to commit themselves to the allegation that Captain Heald had been *compelled by Government authority to enter the service with his vessel*. Yet these are the parties who are referred to in the letter of Mr. B. F. Winslow to Hon. James Buffinton as signers of claimant's petition, and who, he remarks, "are so well known to you that the facts cannot be disputed."

The case has less merit than the committee had supposed, for there seems to have been a studious effort to conceal the facts on the part of those presenting it; and the only testimony presented by claimant is now shown by the report from the Third Auditor to be absolutely worthless. He, too, must have known that the schooner had been paid for by the Government on entirely different grounds from those stated by him; for two of his brothers were part owners of the schooner, from whom he must have heard something of the result of the claim against the Government, in which he had been an important witness.

The committee repeat what they have before said in respect to the difference between persons maimed or killed while in the temporary employment of the Government under contract, and those enlisted or commissioned into the military or naval service, provision being made by law for the latter, while the former are purposely excluded from the benefits of the law. No matter how unfortunate or how much their sufferings may excite our sympathies, dying as thousands did during the war, in hospitals, in camp, on the plains, and at sea, the employment being voluntary and temporary as well, and for the most part at high wages, the reason of the law is obvious; and even the terrible fate of those who were incarcerated at Andersonville must not be permitted to change the rule, inasmuch as it does not change the reason upon which it rests.

The committee recommend the indefinite postponement of the bill.

S. Rep. 688—2



IN THE SENATE OF THE UNITED STATES.

MARCH 1, 1875.—Ordered to be printed.

Mr. ANTHONY submitted the following

REPORT :

[To accompany an amendment (to the bill H. R. 4729) reported by him from the Committee on Printing.]

The Committee on Printing, to whom were referred sundry papers concerning the pneumatic tube between the Capitol and the Government Printing-Office, have had the subject under consideration, and respectfully report :

That the Committee on Printing having learned, in the spring of 1870, that pneumatic tubes were successfully used in London, Paris, Berlin, and elsewhere for the prompt transmission of messages, letters, and parcels, thought that such a mode of conveyance between the Capitol and the Government Printing-Office would be of great practical benefit, for the speedy transmission of proofs, bills, and reports, and would materially aid legislation. The Senate, on the 15th of July, 1870, directed the committee to inquire into the subject, and the result of their correspondence with both practical and scientific men confirmed them in the opinion that a small air-tight cast-iron tube might be successfully and profitably used.

The act of Congress approved June 10, 1872, contained an appropriation of \$15,000 for the purpose of constructing a pneumatic tube between the Capitol and the Government Printing-Office, and an attempt was made by Mr. Albert Brisbane to have it expressly provided that it should be operated by hollow spheres, an invention of his which had never been practically tested. Congress, however, declined to make the appropriation applicable to this project only, and it was expressly stipulated that the tube should be "operated by hollow spheres or otherwise," no other mention being made of Mr. Brisbane's scheme. A responsible machine-builder was ready to submit proposals for laying down an iron tube, such as had been for some years in successful use in London and other cities abroad; but, without advertisement or public notice of any kind, a contract was entered into with Mr. Brisbane, on the 20th of June, 1872. Under this contract Mr. Brisbane commenced the construction of a tube thirty-two inches in diameter, of narrow strips of board one and a half inches in thickness, hooped at intervals of about four feet with iron bands, about one and a half inches in width by a quarter of an inch in thickness.

Before this shell had been laid very far, the weight of the earth above it so crushed and deformed it that the spheres would not pass through it, and the work was abandoned before the 1st of July, 1873, when it was to have been completed. Mr. Brisbane, in a letter which he addressed to the Secretary of the Interior on the 22d of June, 1873, admitted that the tube was "a failure," but proposed to rebuild it at his own expense, provided that he could have an extension of time and a reduction of the size to sixteen inches. The Secretary informed him in reply, that while he had no authority to change the contract, he presumed he would never be called upon to make good the forfeiture clause in the contract, provided he would complete the tube before the meeting of Congress in December, 1873. On the 24th of November, 1873, Mr. Brisbane informed the Secretary that he had recommenced operations, that he was supplied with the necessary funds, and that he expected to have the tube completed in about thirty working days from that date.

Nearly three years have elapsed since the appropriation was made, and although \$12,000 was drawn from the Treasury and expended, the committee cannot ascertain that the work performed ever has been or can be of the slightest possible value "for the transmission of books, packages, &c.," between the Capitol and the Government Printing-Office. In the opinion of the committee, the commission which examined the work were in error when they said that "it was evidently the intention of Congress, in making the appropriation for the pneumatic tube, to test the practicability and value of the invention for the transmission of parcels in a tube by means of spheres." The Committee on Printing, when it inaugurated the idea in the spring of 1870, certainly did not contemplate the appropriation and expenditure of a large sum of public money for testing an untried experiment; and the words of the appropriation, which were so amended in the Senate as to state that the tube should be "operated by hollow spheres or otherwise," show conclusively that propositions for laying a tube in accordance with plans which had been successfully tested for years, should have at least been considered before the contract was made with Mr. Brisbane.

The Committee on Printing has never seen any proof, based on practical operations, that Mr. Brisbane's tube and spheres could perform the desired work of transmission, and they fear that the \$12,000 expended in attempting to carry out his plan, has virtually been buried in North Capitol street.

Having waited more than a reasonable length of time to enable Mr. Brisbane to perfect his work, the Committee on Printing now recommend that a pneumatic tube, of the description which has been successfully used for years in England, be laid down between the Capitol and the Government Printing-Office. The publication of the Congressional Record at the Government Printing-Office makes it more desirable than before that there should be some mode of rapid transmission of copy, proofs, instructions about printing, orders for copies of the Congressional Record, &c.

The committee append a letter, giving a description of some of the pneumatic tubes in Europe, by Mr. Benjamin C. Pole, an engineer, who has been employed in the construction of light-houses by the United States Government, and who is highly recommended.

The committee recommend that provision for the construction of such a tube be inserted as an amendment to the bill (H. R. 4729) making appropriations for sundry civil expenses of the Government for the next fiscal year, and they believe that it will promote the perfection, the celerity, and the economy of the public printing.

LETTER FROM MR. B. C. POLE.

219 DELAWARE AVENUE, N. E.,
Washington, D. C., February 13, 1875.

SIR: I have the honor respectfully to acknowledge the receipt of your letter of the 10th instant, requesting information upon the subject of pneumatic tubes, as established and in successful operation in Europe, and beg leave to submit the following data:

The system of pneumatic tubular locomotion appears to have been practically experimented upon in England as early as 1841, being then known as the "Atmospheric Railroad." The theory was not at that time brought to perfection, but has never been abandoned as impracticable; and continued researches and experiments have demonstrated the entire utility of the system.

In 1851-2-3 the Electric and International Telegraph Company of London successfully put into operation the pneumatic-tube system of transmitting written dispatches between their central station in Lothbury and the subsidiary stations at Cornhill and Stock Exchange; they sending the original dispatch through these tubes, saving a repetition of each message, and also preventing all liability of error in retransmitting the same over wires—the tube conveying the message almost as rapidly as it could have been rewritten and sent by wires.

About June, 1860, a prospectus was issued by the "Pneumatic Dispatch Company," established in London for the purpose of constructing pneumatic tubes for conveying dispatches and packets of considerable bulk, including the mail-bags of the general post-office between the railway and district offices, and delivering goods at various stations in the metropolis; also to connect the various government establishments; and on June 8, 1860, the advertisement of the prospectus of the "Pneumatic Dispatch Company" (limited) appeared in the London Engineer.

July 26, 1861, saw the first of the pneumatic tubes of this company at work in Battersea Fields. An iron tube, upward of a quarter of a mile long, had been laid along the bank of the Thames, and mail-bags, parcels, and even adventurous workmen were whisked through at the rate of twenty-five miles an hour. The air for working the tube was exhausted, and a very low degree of exhaustion sufficed for the purpose of propulsion; the vacuum which was attained by the engines gave to the trains sometimes a speed of nearly a mile a minute. The loads did not exceed half a ton per carriage, but upon the carriages being coupled in trains of two or more, the speed, with an exhaustion of from seven to eleven inches of water, was twenty-five miles an hour.

This tube, after having been fully proven, was removed from Battersea Fields, and, with additional length, was laid under ground from the Euston Square station to the district post-office in Eversholt street, and thirty trains per day are now run through, except Sundays. February 20, 1863, the post-office first sent the mails through this tube, and still continues so to do with perfect regularity. The time of transmission of a train is seventy seconds, and the cost of daily running is £1 4s. 5d. The number of trains passed through per day does not appreciably increase the expense.

The Pneumatic Dispatch Company commenced the construction of their large line of tubes from the Euston Square station to the general post-office in 1864, and completed the same in the autumn of 1865. This tube is 4 feet 6 inches in diameter, having a curve of 170 feet radius at the corner of Drummond street and Hempstead road, two curves of 70 feet radius each, and a grade in some places of 1 in 15. The tube is divided into two lengths; 3,080 yards from Euston Square station to Holborn, and 1,658 yards from Holborn to the general post-office, having in the latter length two grades of 1 in 15. The tube is of cast iron, Ω -shaped, laid in 9-foot lengths; weighing about one ton per length. The whole is successfully worked by exhaust and pressure.

In October, 1865, the Duke of Buckingham, chairman of the company, and a number of the directors were driven through the tube; the circumstance, as intended, demonstrating their confidence in and the perfect mechanism of the work.

From statistical information furnished by the London and Northwestern Company in 1866, it is demonstrated that 120 tons of goods can be passed through a four-foot tube in one hour, at a speed of eighteen miles per hour, and at a cost of 1d. per ton per mile.

In 1866, a line of pneumatic tube, 3,500 feet in length, was laid in Paris, from the telegraph-office near the Grand Hotel to that in or near the Place de la Bourse, with satisfactory results.

The successful operation of the pneumatic system of transmitting written dispatches, in operation by the Electric and International Telegraph Company, of London, since 1853, and a line of 2,835 feet in length, connecting the Bourse and Central Telegraph office in Berlin, since December, 1865, induced the telegraph administration of Prussia to establish similar lines in Berlin, in 1868. The total length of the tubes so laid, up to November, 1871, was 32,000 feet. The principle on which these tubes are laid is that of a continuous circuit, and the carriages for the messages are enabled to follow one another at short intervals. The tubes are laid by pairs, 2 feet beneath the pavements,

and are 3 inches interior diameter. The carriages and receiving-mechanism are of very simple construction. Simple contrivances are placed at the lowest points in the tubes to receive the accumulation of water from condensation, and a carriage, constructed on the principle of a brush, is occasionally sent through the tube, effectually cleansing it from dirt and rust.

July 15, 1870, reports the pneumatic principle fully at work in London, Paris, Berlin, and minor places, and the system has been steadily improved and enlarged upon up to the present time.

I have the honor to be, very respectfully, your obedient servant,

BENJ. C. POLE,
Engineer.

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IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1875.—Ordered to be printed.

Mr. MITCHELL submitted the following

REPORT:

[To accompany bill H. R. 633.]

The Senate Committee on Claims, having had bill H. R. 633, for the relief of Randall Brown, of Nashville, Tenn., under consideration, report the same back with the following amendment, and recommend its passage:

Strike out all after the enacting clause, and insert in lieu thereof the following:

“That the claim of Randall Brown, of Nashville, Tenn., for the alleged loss of horses, wagons, and harness while engaged in the service of the military authorities of the United States during the war of rebellion—which claim is now pending in Congress—be, and the same is hereby, referred to the Court of Claims, with jurisdiction to determine the same on the law and facts.”

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IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1875.—Ordered to be printed.

Mr. PRATT submitted the following

REPORT:

[To accompany bill S. 1361.]

The Committee on Pensions, to whom was referred, upon a motion to recommend, the case of Jacob Nix, a claimant for a pension, submit the following report:

When this case was before the committee on April 23, 1874, they agreed upon and submitted the following report:

Mr. PRATT submitted the following Report:

The Committee on Pensions, to whom was referred the petition of sundry citizens of New Ulm, praying that Jacob Nix be placed on the pension-roll, submit the following report:

The Sioux Indians attacked the town of New Ulm, in the State of Minnesota, on the 19th and 23d days of August, 1862. There were no United States troops or State militia stationed at the town or in the vicinity at the time to repel the attacks. There was a small garrison at Fort Ridgely, but entirely inadequate to keep the Indians peaceable. This tribe lived on a reservation adjoining Brown County, became hostile, murdered their agent and traders at the agency, and killed nearly the whole command sent from the fort to the agency for the purpose of protecting the property of the United States and the lives of such citizens as dwelt on the reservation. The citizens, however, rallied, were enrolled, and organized into companies, under the direction of the sheriff, and the said Jacob Nix was designated by him to take command, and did so until the arrival of Hon. Charles C. Flandrau, after which Nix acted as assistant commander, and by his bravery and good conduct contributed largely to prevent the town falling into the hands of the Indians. While commanding he was twice wounded, losing the third finger of his left hand and receiving a gunshot wound in the muscles of the left arm, between the elbow and shoulder, by which he has been partially disabled from earning his subsistence. He was formerly prosperous, but by reverses in business is now poor. These are the grounds on which a large number of the citizens of New Ulm pray that he be granted a pension.

Several affidavits establish the foregoing facts. *The case is clearly not within any rule by which a pension could be granted under existing laws at the Pension Bureau. Should Congress grant one?*

How many persons were killed and disabled in these two attacks of the Indians is not shown. But clearly those disabled could set up a similar claim, while the widows, children, and dependent relatives of those who were killed or died of injuries received in the engagements could make a like claim, if this one be allowed.

The force assembled was of the State militia. The officers were civilians. No officer of the United States was in command.

The defense was conducted wholly by citizens, organized for the time being by the sheriff, in pursuance of a law of the State. No law had promised the men who obeyed the call of the sheriff and governor pensions in case of disability.

Whatever may be thought of the propriety of extending the law to such cases, it appears to the committee unwise to single out an isolated case which has no aggravated features. The committee, therefore, ask to be discharged from the further consideration of the petition.

It was claimed upon the coming in of this report that the committee had misconstrued the ninth section of "An act supplementary to an act

to grant pensions," approved July 4, 1864, (Statutes at Large, vol. 13,) which section is as follows:

That those persons, not enlisted soldiers in the Army, who volunteered for the time being to serve with any regularly-organized military or naval force of the United States, or *where persons otherwise volunteered and rendered service in any engagement with rebels or Indians, since the 4th day of March, 1861*, shall, if they have been disabled in consequence of wounds received in battle in such temporary service, be entitled to the same benefit of the pension-laws as those who have been regularly mustered in, &c.

The committee, however, received a communication from the Pension-Office, May 16, 1874, which sustained the construction of the committee, and is in the following words:

SIR: In reply to your letter of the 12th instant, in regard to the case of Jacob Nix, who applies to be pensioned by a special act of Congress on account of wounds received in battle with the Indians at New Ulm, Minnesota, in August, 1862, I have the honor to state that the act of March 3, 1873, is applicable to his case, and that a claim by him would not be admissible under the general law, as the provisions of that act, which refer to persons not enlisted in the service of the United States, embrace only such persons as served under the orders of an officer of the United States, or such as volunteered for the time being and rendered service in any engagement with the rebels or Indians. The forces which were engaged at New Ulm, Minn., were not under the command of an officer of the United States Army. The persons engaged were not volunteers, as it appears from evidence on file at this Office that they were called into service by the sheriff of Brown County.

The decision of the Department is adverse to the claims of persons disabled in this engagement on the ground that they were not volunteers.

The claims of the persons who were disabled in that engagement, and the claims of the widows and relatives of those who were killed, appear to be meritorious, and it is respectfully suggested that the general law should be so amended as to embrace them, or they should be provided for by special act of Congress.

Very respectfully,

JOS. LOCKEY,
Acting Commissioner.

HON. D. D. PRATT,
Chairman of the Committee on Pensions, United States Senate.

It will be seen that the Pension-Office is of opinion that the persons who were disabled in that engagement with the Indians ought to be included in the benefits of the pension-law either by a general amendment or by special legislation.

The committee, upon reconsideration of the case of Jacob Nix, have agreed to report a bill for his relief, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1875.—Ordered to be printed.

Mr. WADLEIGH submitted the following

REPORT:

[To accompany bill S. 1362.]

The Committee on Patents, to whom was referred the petition of Annie C. Grant, praying for the passage of an act to allow the Commissioner of Patents to sign the certificate of the extension of the letters-patent granted to her husband, deceased, on the 29th day of May, 1860, have considered the same, and beg leave to report :

The evidence submitted shows that the application for said extension was duly filed in January, 1874, and all the requirements of the law complied with in the case; that the matter was favorably considered by the Commissioner of Patents. The record of the case shows that the circular sent to the attorney was dated at Washington, May 26; that the application was allowed. There was not then time for her agent to forward from Portland, Maine, his place of residence, the second and final fee of \$50, which is required before the Commissioner signs the certificate of extension. The letters-patent consequently lapsed, and when the fee was received, six days later, the Commissioner had no power to issue the extension, and his failure to do so was based on the ground alone that the final fee was not paid within the time prescribed by law. This final fee has remained in the hands of the Commissioner since last June, and the petitioner now asks that an act may be passed allowing the Commissioner to sign said certificate of extension the same as though the fee had been received before the expiration of the patent. The committee do therefore recommend the passage of the accompanying bill.

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